



City Council

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Cynthia Roberts, Foreperson
2022-2023 Contra Costa County Civil Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553-0091

Dear Foreperson Roberts:

Pursuant to your June 16, 2023 letter regarding Grand Jury Report No. 2306, "A Plan Without a Home" please consider this to be the City of Lafayette's response. This response was reviewed and authorized by the City Council at a duly noticed City Council meeting on September 11, 2023. According to page 19 of the Report, Lafayette is required to respond to Findings F1-F13 and Recommendations R1-R10.

Findings

F1. Within existing city or County infrastructure, there is no clear owner who is responsible for achieving RHNA permitting targets.

Disagree.

Jurisdictions establish an entity responsible for preparing and implement the Housing Element, typically the Planning or Community Development Department. These departments are required by State law to report annually on Housing Element implementation, applications, entitlements, permitting, and occupancy. Jurisdictions do not develop housing projects, they establish the objective standards and approval process; private developers build housing projects. These are the numbers that ultimately meet or do not meet the RHNA targets established by the State.

F2. City and County officials see no direct path to meet state-mandated regional housing (RHNA) targets.

Partially Disagree.

While there is no clear, direct path, there are multiple potential paths to meet the state-mandated regional housing needs allocation RHNA targets. First, at a policy level, cities and the County must identify adequate sites to meet the RHNA targets through their Housing Elements. In addition, Housing Elements include strategies and programs to encourage housing development in accordance with State Law. The State will not certify a Housing Element that does not accommodate RHNA targets. Second, at an implementation or production level, cities and the County create pathways for others to construct

housing. Cities and the County rely on applicants and the development community, including affordable housing developers, to propose and construct units.

City and County officials recognize the challenges, our Housing Element identifies a clear path to accommodate the RHNA targets, and we are implementing strategies to meet state-mandated regional housing (RHNA) targets. Officials acknowledge the complexity of the task and are committed to finding viable solutions and collaborating with stakeholders to address the housing needs of the region. Ultimately, however, the cities and County are not housing developers and do not construct the units. Most of the factors affecting whether a housing development is undertaken and built lie outside the control of the local jurisdiction.

F3. There are currently no measurable penalties if a city or a County does not achieve RHNA targets in an approved housing element plan.

Partially Disagree.

While there are no immediate legal or financial penalties if housing production does not meet RHNA targets, there are penalties for not accommodating RHNA in a Housing Element and consequences for not issuing adequate permits, for example a lower threshold for developers to qualify for SB 35. In addition, jurisdictions are subject to penalties if they do not adopt a Housing Element that is certified by the State, including designating adequate sites to accommodate the RHNA targets. Jurisdictions may be subject to litigation from individuals, housing rights' organizations, developers, and/or HCD. A court can curtail local control, including suspending a city's authority to issue building permits or approve certain land use permits. Cities may also be subject to court-issued fines, court receivership, and streamlined approval processes that remove local discretion.

F4. Data published by ABAG shows that Contra Costa County and most of its cities have missed their current RHNA targets for very low- and low-income housing allocations. The allocation requirements continue to increase (16x for very low-income and 4x for low-income residents).

Partially Disagree.

It is true that many cities and the County as a whole missed their RHNA targets for very low and low-income housing, and that RHNA Allocation for very low- and low-income housing has continued to increase. However, the increase in RHNA allocation is not to the extent mentioned in this report. RHNA numbers from the past 3 cycles indicate that the current (6th) cycle has had the largest increase of 2.5x from the previous cycle in very low- and low-income housing requirements.

F5. Many obstacles hinder the development of AH at the local level, specifically for very low and low-income housing, including:

- Limited availability of land;**
- Restrictive zoning policies specific to AH development;**
- Limited developer interest to bring projects forward;**
- Limited available funding;**
- Lack of community support;**
- NIMBY opposition & city council response to NIMBY opposition.**

Partially Disagree.

Though the above list identifies some obstacles that can hinder the development of affordable housing, the City has addressed each item in the Housing Element analysis, goals, policies, and implementation programs to the extent feasible. Ultimately, cities are not housing developers and do not construct housing units. While we can construct a favorable regulatory framework for entitlement, most of the factors affecting whether a housing development is undertaken and built lie outside the City's control.

F6. Zoning changes are generally addressed only when a project is presented for development.

- Zoning obstacles include:**
- Housing element plans that offer poor land choices for AH development;**
- Restrictive height and high-density zoning policies;**
- Lack of inclusionary housing ordinance(s) in many cities.**

Partially Disagree.

Most jurisdictions consider amending/changing the zoning while reviewing their Housing Element and/or updating the General Plan, not just when a project is proposed for development.

F7. Penalties directed at cities and the County (financial, loss of control over local planning) are tied to not meeting state deadlines for Housing Element plan approval.

Agree.

F8. Builder's Remedy and SB35 projects do not address ingrained local obstacles identified in this report that prevent the completion of approved AH projects.

Partially Disagree.

Builder's remedy and SB35 are intended to provide a streamlined development process for jurisdictions that have fallen out of compliance with State Housing Law (Builder's Remedy) or where housing production does not meet the RHNA targets (SB35). The Housing Element and its associated programs

are intended to address potential local constraints to housing development. Builder's Remedy also does not guarantee a good housing project.

A variety of factors affect the construction and completion of housing projects, including market conditions, capital costs, financing, supply chain disruptions, and labor market conditions. These important factors are not ingrained local obstacles and are beyond a jurisdiction's control.

F9. When local Redevelopment Agencies (RDA's) were discontinued by the state in 2012, the County and cities, did not address the loss of funding for affordable housing or find alternative funding to support affordable housing projects until voters passed Measure X in November 2020. Projects that target very low- and low-income residents were particularly impacted.

Partially Disagree.

The State discontinued 452 RDAs in 2012 to address a State budget shortfall, eliminating many small jurisdictions' only ongoing source of funds for affordable housing. State law also limits local jurisdictions' ability to create new funding sources. Voters must approve virtually all new funding or financing mechanisms to generate the revenues needed to preserve existing affordable housing or construct new affordable housing. Cities cannot, for example, float bonds any longer without voter approval.

F10. Measure X housing funds are not fully dedicated to building AH for very low- and low-income residents.

Agree.

F11. Local funding provided by bonds like Measure X Housing Fund is a critical component of a developer's overall ability to raise funds for an AH development.

Disagree.

Local funding provided by bonds like the Measure X Housing Fund can help a project's overall ability to raise funds for an affordable housing development. Generally affordable housing developers must rely on multiple funding sources including federal and state grants, tax credits, private investments, and partnerships with nonprofit organizations. While local funding can help a project's financial viability and facilitate its development, affordable housing projects cannot move forward successfully without a combination of various funding sources and partnerships that fill the funding gap between market rate and affordable housing feasibility. The critical aspect lies in the ability of developers to strategically leverage and combine multiple funding options to meet the financial requirements of the project and ensure its feasibility.

F12. Cities that proactively engage citizens, address zoning obstacles, make reasonable zoning concessions, work collaboratively with developers, provide local funding support, and are united in addressing NIMBY opposition, have been successful in attracting AH projects.

Partially Disagree.

We agree that proactive strategies can help attract affordable housing developers and mitigate the barriers to housing production; however, proactive strategies alone do not result in affordable housing projects being constructed. For example, while the City of Lafayette engages in all of the above, a variety of other obstacles towards affordable housing development exist beyond a local jurisdiction's control. This includes the gap in financing between constructing market-rate versus affordable housing, land costs, existing land uses, the cost to upgrade or renovate an existing nonresidential building to accommodate housing, and the cost of capital, construction materials, and labor.

F13. The latest RHNA targets for cities and unincorporated Contra Costa County show a significant increase in the number of units that are expected to be permitted for very low and low-income housing.

Agree.

Grand Jury Recommendations

R1. Each city and the County should consider assigning a staff position with clear leadership, ownership and accountability to achieve allocated RHNA targets. The individual in this position would be responsible for establishing and promoting an operational plan to achieve the RHNA goals set forth in the housing element plan.

The recommendation has been implemented.

California's Housing Element Law acknowledges that, in order for the private market to adequately address the housing needs and demands of Californians, local governments must adopt plans and regulatory systems that provide opportunities for, and do not unduly constrain, housing development. Cities and Counties are not responsible for the development and construction of housing to achieve the allocated RHNA targets. Instead, they are responsible for the effective implementation of their housing elements and housing programs to address constraints to housing and for tracking and reporting the jurisdiction's progress toward achieving their RHNA. Lafayette's Planning & Building Department is assigned with the responsibility of the above tasks.

R2. Each city and the County should report AH progress and lack of progress using data across all four measured income groups. Special attention should be paid to tracking the housing needs of residents categorized as very low- and low-income. Cities and the County should communicate their progress biannually, against RHNA targets at council and supervisor Meetings.

The recommendation has been implemented.

State Law (§65400) requires each jurisdiction to prepare an annual progress report (APR) on the status and progress in implementing its housing element using forms and definitions adopted by the California Department of Housing and Community Development (HCD). The APR allows HCD to track the progress of the implementation of a jurisdiction's Housing Element and requires its submission as a threshold requirement for several State housing funding programs.

Government Code §65400 requires the planning agency to provide this report to the legislative body (i.e., local Council or Board), HCD, and OPR by April 1 of each year (covering the previous calendar year). APRs must be presented to the local legislative body for its review and acceptance on a regular meeting agenda.

R3. Each city and the County should consider creating a dedicated AH commission comprised of a multi-disciplinary team of diverse citizens and led by a current, nonelected, city expert in planning. Each commission would be charged with providing a community voice in the process and helping to identify and address obstacles that hinder the development of affordable housing projects in their community.

The recommendation will not be implemented.

The City of Lafayette already has two bodies charged with providing a community voice in the process and helping to identify and address obstacles that hinder the development of affordable housing projects in their community. The General Plan Advisory Committee and the Planning Commission are comprised of multi-disciplinary and diverse citizens who provide a community voice in the process of developing the City's Housing Element and implementation programs, including identifying and addressing obstacles that hinder the development of affordable housing. Creation of yet an additional body would be redundant and place further strain on limited City resources to address State mandates and the substance of the matter, with no evidence that such a body would be more effective in reaching the desired outcomes.

While we do not intend to pursue the recommended dedicated AH commission, Lafayette values the underlying principle of community engagement and recognize the importance of community input in the decision-making process. We will continue to expand on strategies that promote transparency, inclusivity, and community-driven solutions for affordable housing development in our city.

R4. Each city and the County should consider reviewing existing processes and identifying changes that would address or resolve the specific obstacles identified in this report that hinder achieving RHNA allocation targets for very low- and low-income housing in their Community.

The recommendation has been implemented.

Comprehensive Process Review: As required by State Law, the City of Lafayette has reviewed existing processes and identified programs to address constraints to development through the Housing Element's Constraints and Zoning Analysis Section. This includes a thorough review of existing processes related to affordable housing development, permitting, and zoning regulations. This review aimed at identifying any inefficiencies or barriers ("constraints") that may contribute to the challenges in meeting RHNA allocation targets.

R5. Each city and the County should consider developing a public dashboard to report progress against RHNA targets.

The recommendation has been implemented.

The City of Lafayette prepares an annual progress report (APR) on the status and progress of implementing our housing element using forms and definitions adopted by the California Department of Housing and Community Development (HCD). (Government Code Section 65400.) Each APR must be submitted to HCD and the Governor's Office of Planning and Research (OPR) by April 1, covering the previous calendar year. The City posts these reports online and HCD additionally compiles and showcases all APRs through their interactive digital data dashboard with downloadable data sets.

R6. Each city and the County should consider, in their individual Housing Element plans, putting forth land zoned "suitable for residential use," without development obstacles, and located strategically close to existing services, for AH purposes.

The recommendation has been implemented.

As required by State Law, the City of Lafayette has prepared a site inventory identifying land suitable and available for residential development to meet our regional housing needs by income level. Please see the response to Finding 6(a) for details. Further, in addressing HCD's Affirmatively Furthering Fair Housing (AFFH) requirements there is a thorough review of the site selection via the Tax Credit Allocation's Committee (TCAC) Resource Map that designates areas of low-, moderate-, high-, and highest-resource within Lafayette.

R7. Each city and the County should consider reviewing their zoning policies to identify restrictive zoning policies unique to their jurisdiction that impede AH projects and consider making zoning changes in light of that review that will support AH in their community.

The recommendation has been implemented.

Through the Housing Element process, the City of Lafayette has reviewed its zoning policies and identified potential affordable housing development constraints. The Housing Element Program Section outlines forthcoming changes to zoning policies with specified timeframes to address the identified constraints.

R8. Cities should consider adopting an inclusionary housing ordinance as part of their standard development policy by the end of 2023 (if not already in place).

The recommendation has been implemented.

The City of Lafayette has required inclusionary housing since it established a Redevelopment Agency in 1994. After the State disbanded redevelopment as a tool to provide affordable housing, the City adopted a local inclusionary housing ordinance set forth in Chapter 6-37 of the Lafayette Municipal Code.

R9. Each city and the County should consider how to prioritize the implementation of housing projects that promote development of very low- and low-income housing.

The recommendation has been implemented.

Lafayette prioritizes the review and permitting process for affordable housing projects, expediting the approval timeline. This aims to minimize delays and facilitate the construction of housing units for low-income residents more efficiently. The City also supports eligible projects using CEQA streamlining provisions including infill exemptions. The City has programs in the Housing Element to reduce impact fees for ADUs to incentivize their construction, and to reduce or defer fee collection for multi-family affordable housing projects.

R10. Each city and the County should consider prioritizing Measure X funding requests that support projects that address RHNA targets for very low- and low-income residents. Each city and County should consider reporting regularly to their residents on the use of Measure X funds for such purposes.

The recommendation has not yet been implemented.

Measure X is a countywide 20-year, ½ cent sales tax approved by Contra Costa County voters on November 3, 2020 “to keep Contra Costa’s regional hospital open and staffed; fund community health centers, emergency response; support crucial safety-net services; invest in early childhood services; protect vulnerable populations; and for other essential county services.” Under the Measure X Program Allocation Summary, only \$10 million dollars (about 13% of FY 2022-23 funding and about 4.5% of total funding) were allocated to a Local Housing Trust Fund; for FY 2023-24, \$12 million dollars were allocated. The Measure X Housing Funds are to be dispersed by the Department of Conservation and Development (DCD) and the Health Services’ Health, Housing and Homeless (HSD-H3) Services and the Housing Authority of the County of Contra Costa. The use of Measure X funds for housing are reported

by the County here: <https://www.contracosta.ca.gov/8530/Measure-X>. Prior to receiving any Measure X funds the City will consider prioritizing those funds for projects that address RHNA targets for very low- and low-income residents

We appreciate your time and attention in consideration of these important matters and hope this letter is responsive to your request.

Sincerely,

A handwritten signature in black ink that reads "Niroop K. Srivatsa". The signature is written in a cursive style with a large initial 'N' and 'S'.

Niroop K. Srivatsa
City Manager