



CITY OF MILPITAS

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(ENDORSED)
FILED
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Clerk of the Court
Superior Court of CA County of Santa Clara
BY Janice Jones DEPUTY

September 18, 2018

Honorable Patricia Lucas
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

Re: Response to Santa Clara County Civil Grand Jury Report on "Affordable Housing Crisis: *Density is Our Destiny*"

Dear Honorable Judge Lucas:

The Milpitas City Council received the Santa Clara County Civil Grand Jury's Report entitled "Affordable Housing Crisis: *Density is Our Destiny*." The following is the City's response to the Findings and Recommendations applicable to the City of Milpitas pursuant to Section 933.05 (a) and (b) of the California Penal Code.

Finding 1a: Lack of housing near employment centers worsens traffic congestion in the County and increases the urgency to add such housing.

Finding 1b: Mass transit stations (Caltrain, VTA, BART) create opportunities for BMR units.

Finding 1c: Density bonus programs are not being used aggressively enough to produce the needed BMR units within one-half mile of transit hubs.

Response: The City of Milpitas generally agrees with Findings 1a, 1b and 1c. The City defines mass transit hubs as high-frequency, quality transit as BART and light rail, and not bus or car share -- as these options are not frequent and accessible to many residents.

In addition, if density bonuses are requested the City Council has reviewed each case-by-case and has a record of supporting density bonuses for BMR units over the allowable densities.

Recommendation 1a: To improve jobs-to-housing imbalances, the cities of Palo Alto, Santa Clara, Milpitas, Mountain View and Sunnyvale should identify, by June 30, 2019, parcels where housing densities will be increased. The identification should include where projects are expected to be permitted and the number of BMR units anticipated for each parcel.



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Response: Part of the Recommendation has been implemented; part of the Recommendation requires further analysis.

The City of Milpitas' Housing Element has identified parcels that collectively can provide at least 1,400 units in the Midtown Specific Plan and over 2,400 units in the Transit Area Specific Plan (TASP) – areas with very high-density with a Transit Oriented Development overlay, which allows up to 80 units per acre and with the maximum density bonus of 35% up to 100 units per acre. The total number of potential units can exceed the overall percentage of unit production of the 2015-2023 Regional Housing Needs Allocation (RHNA) cycle

The City adopted an Affordable Housing Ordinance on June 12, 2018 and it became effective on July 20, 2018. It requires new developments to provide 15% of their total units to be affordable. If the developer provides more than 20% of their total units to be affordable units as defined in the Affordable Housing Ordinance, the developer can receive additional administrative planning incentives in addition to the State's density bonus concessions and incentives. The number of BMR units for each parcel will be determined as each project is developed.

In addition the City is undergoing both a Midtown Specific Plan and General Plan update that may explore various opportunities to best utilize land use or underdeveloped land for future development and growth.

Recommendation 1b: *Cities should identify parcels within one-half mile of transit hub that will help them meet their LI and moderate-income BMR objectives in the current RHNA cycle, by the end of 2019.*

Response: The Recommendation has been implemented, with a summary regarding the implemented action below.

The City of Milpitas has already identified parcels within one-half mile of the future BART station and has developed the Transit Area Specific Plan that has parcels zoned for very high density. Those parcels or opportunity sites have been listed in the Housing Element. Although, the parcels are not designated for a particular income category, the City has designated two sites for affordable housing development for very-low to low income households at 1432-1446 S. Main Street owned by the Housing Authority, and 1452 S. Main Street owned by the City of Milpitas, both within one-half mile of transit. These two parcels are designated for very-high density residential with a Transit Oriented Development overlay and density bonus which may allow up to 100 units per acre. In addition, the City is updating its Accessory Dwelling Unit (ADU) ordinance to at a minimum align with State law and possibly be more permissive than State Law to further and incentivize and encourage ADU production.



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This will allow homeowners to contribute to the affordable housing stock by providing an option to low-income renters. The City is also working on updating the Midtown Specific Plan and General Plan for underutilized areas and forecasting for growth in the future.

Recommendation 1c: *Cities should revise their density bonus ordinances to provide bonuses for LI and moderate-income BMR units that exceed the minimum bonuses required by State law for parcels within one-half mile of transit hub, by the end of 2020.*

Response: The Recommendation has been implemented, with a summary regarding the implemented action below.

The City's density bonus ordinance aligns with State law. Therefore, instead of revising the density bonus ordinance, the City of Milpitas has adopted an Affordable Housing Ordinance that goes beyond State law for density bonus incentives. If a developer chooses to build above 20% of the total units for affordable housing, the developer can elect two additional waivers that increase the feasibility of the project under the discretion of the Director of Planning. In addition to the State's incentives, this has allowed projects to exceed minimum bonus requests required by State law if providing for additional affordable units.

Finding 2a: *Employers in the County have created a vibrant economy resulting in an inflated housing market displacing many residents.*

Finding 2b: *Contributions to BMR housing from employers in the County are not mandated nor evenly shared.*

Response: The City of Milpitas generally agrees with Findings 2a and 2b. Given the inflated housing market, it has displaced many long-term residents and contributed to a housing shortage. Current employers do not contribute to BMR housing or funding thereof. However, the City has passed an Affordable Housing Ordinance that requires new commercial development of over 5,000 to pay fees towards the Affordable Housing Fund that will be for low and very-low income housing in the future. Outreach efforts that focus on the commercial developments are being initiated.

Recommendation 2a: *The County should form a task force with the cities to establish housing impact fees for employer to subsidize BMR housing, by June 30, 2019.*

Response: The Recommendation requires further analysis.



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The City of Milpitas is in the process of conducting outreach to determine fees. It will undergo its own process to address impact fees for residential and non-residential (commercial) developments as allowed by the adopted Nexus Study. Currently, there is not a countywide effort to establish BMR housing impact fees for employers, but the City will defer to the County on a potential task force and a timeframe for implementation.

Recommendation 2b: *Every city in the County should enact housing impact fees for employers to create a fund that subsidizes BMR housing, by June 30, 2020.*

Response: The Recommendation requires further analysis.

The City of Milpitas is undergoing its own process to address impact fees for non-residential (commercial) developments as allowed by the adopted Nexus Study. A regional, fixed approach of fees may not benefit all cities. As for impact fees for employers, the City will defer to the County and work with the County and other cities to analyze potential impact fees on a regional basis.

Finding 3a: *RHNA sub-regions formed by several San Francisco Bay Area counties enable their cities to develop promising means to meet their collective BMR requirements. Such sub-regions can serve as instructive examples for cities in the County.*

Finding 3c: *More BMR units could be developed if cities with lower housing costs form RHNA sub-regions with adjacent cities with higher housing costs.*

Finding 3d: *High-cost/low-cost RHNA sub-regions would be attractive to low-cost cities if they are compensated by high-cost cities for improving streets, schools, safety, public transportation and other services.*

Response: The City of Milpitas partially disagrees with Findings 3a, 3c and 3d, as it “may” be attractive to low-cost cities. The value and scarcity of land is a shared sentiment by all cities in the County. More BMR units can be built in both high- and low-cost cities. It is essential for each local city to consider its land use policies to allow more BMR production. At the State level, legislation has emphasized the notion that each city must create its fair share of BMR housing or risk reduced local control.

Recommendation 3a: *Every city in the County should identify at least one potential RHNA sub-region they would be willing to help form and join, and report how the sub-region(s) will increase BMR housing, by the end of 2019.*

Response: The Recommendation requires further analysis.



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The City of Milpitas is open to exploring this opportunity and is undergoing preliminary discussion with the Cities Association of Santa Clara County as it is a Board priority. However, the potential of a RHNA sub-region will not be implemented until the next RHNA cycle (2023-2031). In the fall, the City Council will be presented with a consideration to join the sub-region.

Recommendation 3b: *A RHNA sub-region should be formed including one or more low-cost cities with one or more high-cost cities, by the end of 2021.*

Response: The Recommendation requires further analysis.

The City of Milpitas is currently exploring this idea and opportunity with the Cities Association of Santa Clara County but the current RHNA sub-region will not be implemented until the next RHNA cycle. It should be noted that it is State law to have both high-cost and low-cost cities to produce their fair share of required BMR units to meet their RHNA objectives. It is each city's responsibility to frame their land use policy and zoning to align with State law.

Finding 4a: *Commercial linkage fees can be an important tool to generate critical revenues to support BMR housing.*

Finding 4b: *Use of commercial linkage fees is overdue and could be expected to substantially increase BMR units.*

Response: The City of Milpitas agrees with Findings 4a and 4b. The City of Milpitas does recognize commercial linkage fees as a tool to support BMR housing and as part of the Affordable Housing Ordinance, require commercial developers producing over 5,000 square feet to pay a fee to the Affordable Housing Fund. Currently, staff is in the process of conducting outreach to help determine fees for both commercial and housing fees for City Council's approval.

Recommendation 4: *Campbell, Milpitas, Los Gatos, Los Altos and San Jose should enact commercial linkage fees to promote additional BMR housing, by June 2019.*

Response: The Recommendation has been partially implemented and will be completed by June 2019.

The City of Milpitas adopted an Affordable Housing Ordinance on June 12, 2018 that became effective July 20, 2018, that requires non-residential (commercial) developments with new developments or new additions over 5,000 square feet to pay an impact fee. This fee will be added to the Affordable Housing Ordinance fund and will be conditioned and used only for future very-low and low income



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affordable housing. The City is undergoing the process of conducting outreach to determine the commercial linkage fee as allowed by the adopted Nexus Study.

Finding 5a: Uneven BMR achievements among cities is caused in part by varying inclusionary BMR unit percentage requirements.

Response: The City of Milpitas agrees with Finding 5a. However, the City of Milpitas has built BMR housing before its inclusionary requirements with the recently adopted Affordable Housing Ordinance. Prior to the dissolution of the Redevelopment Agency, the City had more resources that contributed to over 1,200 affordable units that still remain deed restricted.

Recommendation 5: Inclusionary BMR percentage requirements should be increased to at least 15% in Gilroy, Los Altos, Milpitas, Morgan Hill, Palo Alto and Sunnyvale, by the end of 2019.

Response: The Recommendation has been implemented, with a summary regarding the implemented action below.

The City of Milpitas adopted an Affordable Housing Ordinance on June 12, 2018 that became effective July 20, 2018, that requires new development of 10 or more units to designate 15% of the total units to very-low and low income households for rental development and 15% of the total units for moderate income households for ownership development. If a developer builds over 20%, additional planning incentives may apply under the discretion of the Director of Planning.

Finding 6: In-lieu fees, when offered as an option, are too low to produce the needed number of BMR units and delay their creation.

Response: The City of Milpitas agrees with Finding 6. Generally, the cost of in-lieu fees are lower than the cost to produce affordable housing in the Bay Area. The land value in the region is one of the highest in the nation, and the cost to produce one BMR unit has been quoted by City Lab at \$700,000, and rising. Thus for a 100%, 100 units, affordable housing project, the project can cost up to \$70,000,000 – which requires several layers of fund leveraging and months of funding applications. For many for-profit developers, their choice often gravitates to in-lieu fees.

Recommendation 6: Cities with an in-lieu option should raise the fee to at least 30% higher than the inclusionary BMR equivalent where supported by fees studies, by the end of 2019.

Response: The Recommendation requires further analysis.



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The City will analyze any existing fee studies to determine if this is supportable. If not, the City will need to determine what will be required to justify an in-lieu fee at that level and whether this makes sense in the context of the City's inclusionary housing ordinance.

Finding 7: *NIMBY (Not in My Backyard) opposition adversely affects the supply of BMR housing units.*

Response: The City of Milpitas generally agrees with Finding 7 as opposition can have partial impact on BMR production. However, the City of Milpitas has a record of approval and support of affordable housing projects. Recently, the City Council approved a 100% affordable housing project at 355 Sango Court for 102 units.

Recommendation 7: *A task force to communicate the value and importance of each city meeting its RHNA objectives for BMR housing should be created and funded by the County and all 15 cities, by June 30, 2019.*

Response: The Recommendation requires further analysis.

The City is potentially open to the idea. The City would be open to discussion and would evaluate based on the goals and objectives of the established task force and will assess based on those impacts. In addition, State legislation has reinforced each City's responsibility in meeting its RHNA numbers.

Finding 8: *It is unnecessarily difficult to confirm how many BMR units are constructed in particular year or RHNA cycle because cities and the County only report permitted units.*

Response: The City of Milpitas generally agrees with Finding 8. However, all BMR units constructed must be permitted before construction. In addition, all BMR units for ownership have been administered by the City and all rental developments for BMR have been properly managed by a qualified property management company.

Recommendation 8: *All 15 cities and the County should annually publish the number of constructed BMR units, starting in April 2019.*

Response: The Recommendation has been implemented, with a summary regarding the implemented action below.

The City of Milpitas' Building Department keeps a list of building permits issued for all residential units, including BMR units. In addition, the City of Milpitas reports all constructed units as opposed to permitted units, to the State's Department of Housing and Community Development (HCD). The report is due to HCD every April. This information is available on the HCD website,



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<http://www.hcd.ca.gov/community-development/housing-element/index.shtml>, found under the report, "5th Cycle Annual Progress Report Permit Summary."

The above is the City of Milpitas' response.

Thank you.

Sincerely,

Rich Tran
Mayor
City of Milpitas

c: Vice Mayor Marsha Grilli, Councilmembers Garry Barbadillo, Bob Nuñez and Anthony Phan