



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** SEE BELOW

**DATE:** August 29, 2018

Approved

Date

8/29/18

**SUBJECT: REVIEW AND ACCEPT THE RESPONSE TO THE SANTA CLARA COUNTY GRAND JURY REPORT ON "AFFORDABLE HOUSING CRISIS: DENSITY IS OUR DESTINY"**

## RECOMMENDATION

It is recommended that the City Council accept staff's response to the June 21, 2018, Civil Grand Jury of Santa Clara County Report on "Affordable Housing Crisis: *Density is our Destiny*."

## OUTCOME

The California Penal Code requires that a public agency subject to a Grand Jury final report must respond within 90 days to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to the public agency. The City Council's acceptance of the response will allow staff to finalize and submit the required response to the Grand Jury of Santa Clara County (Grand Jury) before the required due date.

## BACKGROUND

Every year, the Grand Jury selects issues to research and analyze on behalf of the citizens of the Santa Clara County (County). Its reports typically include research, findings, and recommendations on government-related issues. The reports identify public agencies that are required, by the California Penal Code, to respond to both the findings and recommendations in the report within 90 days.

On June 21, 2018, the Grand Jury released a report (Attachment A) entitled "Affordable Housing Crisis: Density is our Destiny" (Report). The Report highlights the challenges faced by the County of Santa Clara and its 15 cities, as well as nonprofit agencies such as the Housing Authority of Santa Clara County, Valley Transportation Authority, and the Santa Clara Water District, in the production of below market-rate (BMR) housing. The Grand Jury interviewed

over 65 people, researched the Housing Elements for each city, and reviewed more than 100 documents to inform their report.

The Report focused on the 15 cities in the County and unincorporated area. It includes a discussion of the following topics:

- Regional Housing Needs Assessment (RHNA)
- Not in My Backyard (NIMBY) vs. Yes in My Backyard (YIMBY)
- Inclusionary Housing Ordinances
- Transit-Oriented Development
- Jobs-Housing Ratios
- Linkage and Impact Fees
- Employer Contributions
- Accessory Dwelling Units
- Governmental Entities other than Cities.

The Grand Jury concludes that “drastic action is long overdue” to help address our local housing crisis. Proposed actions include greater communication including reporting the number of BMR units actually produced, increased densities, enactment of policies to increase BMR units, increasing employer contributions to housing including enacting commercial impact fees, enacting housing impact fees and parcel taxes, the creation of a RHNA sub-region, and locating housing near transit. The Grand Jury issued 20 findings and 19 recommendations based on their research and their proposed actions.

The Grand Jury directed the City to respond to specific findings and recommendations by September 20, 2018.

## **ANALYSIS**

On June 21, 2018, the Director of Housing received a letter from the Grand Jury with a copy of the Report and was informed of the requirement to respond to the Presiding Judge of the Santa Clara County Superior Court pursuant to California Penal Code 933.05.

The City may respond to the findings in one of the following ways:

- Agree with the finding;
- Disagree with the finding; or
- Partially disagree with the finding.

The City may respond to the recommendations in one of the following ways:

- The recommendation has been implemented, with a summary describing the implemented actions;
- The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation;

- The recommendation requires further analysis. This response requires an explanation of the scope and parameters of the analysis or study, and a timeframe for the matter to be prepared for discussion. This timeframe shall not exceed six months from the date of publication of the Grand Jury Report; or,
- The recommendation will not be implemented because it is not warranted or is not reasonable, and include an explanation.

The City is required to respond to 14 findings and 10 recommendations. Attachment B contains the City’s draft comprehensive response to the findings and recommendations. A summary of the City’s response is provided below.

**1. Findings**

**Agree**

<b>1b</b>	Mass transit stations (Caltrain, VTA, BART) create opportunities for BMR units.
<b>2b</b>	Contributions to BMR housing from employers in the County are not mandated nor evenly shared.
<b>3a</b>	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.
<b>3d</b>	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.
<b>4a</b>	Commercial linkage fees can be an important tool to generate critical revenues to support BMR housing.
<b>5a</b>	Uneven BMR achievements among cities is caused in part by varying inclusionary BMR unit percentage requirements.
<b>6</b>	In -lieu fees, when offered as an option, are too low to produce the needed number of BMR units and delay their creation.
<b>7</b>	NIMBY opposition adversely affects the supply of BMR housing units.
<b>8</b>	It is unnecessarily difficult to confirm how many BMR units are constructed in a particular year or RHNA cycle because cities and the County only report permitted units.

**Disagree**

<b>4b</b>	Use of commercial linkage fees is overdue and could be expected to substantially increase BMR units.
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**Partially Disagree**

<b>1a</b>	Lack of housing near employment centers worsens traffic congestion in the County and increases the urgency to add such housing.
<b>1c</b>	Density bonus programs are not being used aggressively enough to produce the needed BMR units within one-half mile of transit hubs.
<b>2a</b>	Employers in the County have created a vibrant economy resulting in an inflated housing market displacing many residents.
<b>3c</b>	More BMR units could be developed if cities with lower housing costs form RHNA sub-regions with adjacent cities with higher housing costs

**2. Recommendations**

**Has been implemented**

<b>6</b>	Cities with an in-lieu option should raise the fee to at least 30% higher than the inclusionary BMR equivalent where supported by fee studies by the end of 2019.
<b>8</b>	All 15 cities and the County should annually publish the number of constructed BMR units starting in April 2019.

**Has not been implemented, but will be**

<b>1b</b>	Cities should identify parcels within one-half mile of a transit hub that will help them meet their low-income and moderate-income BMR objectives in the current RHNA cycle by the end of 2019.
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**Has not been implemented, requires further analysis**

<b>3a</b>	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.
<b>3b</b>	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.
<b>4</b>	Campbell, Milpitas, Los Gatos, Los Altos and San José should enact commercial linkage fees to promote additional BMR housing by June 2019.

**Will not be implemented**

<b>1c</b>	Cities should revise their density bonus ordinances to provide bonuses for low-income and moderate-income BMR units that exceed the minimum bonuses required by State law for parcels within one-half mile of a transit hub by the end of 2020.
<b>2a</b>	The County should form a task force with the cities to establish housing impact fees for employers to subsidize BMR housing by June 30, 2019.

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.
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.

As indicated above, the City is already following or working on several of the Report’s recommendations. The rationales for not implementing those in the last group, which staff recommends will not be implemented, are found in Attachment B. They include assessments that the strategy would be ineffective, that competing initiatives are already underway, and that City Council has directed staff otherwise.

San José’s Housing Accomplishments are Substantial

The following provides additional context to the Grand Jury Report, which focuses on San José’s actions as the key for Santa Clara County to improve its affordable housing supply.

San José has made a firm commitment to producing a large amount of housing at significant densities while also growing its job base. Our General Plan 2040 provides for the creation of 120,000 new homes by 2040, the majority of which will be built in dense, mixed-use Urban Villages and growth areas. By the end of 2018, a total residential development capacity of over 18,000 homes will be available in Urban Villages/growth areas, and Downtown. No other city in the County has such ambitious plans for denser development and a mix of uses at dozens of locations to encourage walkable, healthy and connected city development.

It is important to understand that San José’s RHNA goals always far surpass that of all of its neighboring jurisdictions in the County. Our current goal is the production of 35,080 homes over 8.8 years, or an annual production goal of 3,986 homes. However, in the current cycle, the rest of the County *combined* only has a production goal of 22,040 – more than 13,000 fewer homes than San José has assigned. That makes San José’s goal 1.6 times the rest of the County’s production goal combined. The Grand Jury report focuses on the fact that San José’s housing production is far below its RHNA goal on a percentage basis. But in using percentages of RHNA goals attained rather than absolute numbers, it is misleading given San José’s very large housing goals as compared to the rest of the County.

When compared on an equivalent basis in absolute numbers, the City’s production of affordable homes was far higher other the jurisdictions’ production in the previous Housing Element cycle. If our Housing Element period last cycle had been defined to include production in 2017, as other jurisdictions were in the County, San José would have produced 3,712 affordable homes for extremely low-, very low-, low- and moderate-income residents. That would have put San José more than 1,500 units ahead of the second-place jurisdiction, Sunnyvale. No other city was close to San José’s level of production based on absolute numbers. While being a larger producer is appropriate given our city’s large size, the context of those achievements is understated in the Report.

In the first years of the current RHNA cycle, the City focused its commitment of resources on more expensive housing for the homeless, which results in fewer moderate- and low-income housing units than usual. However, our pipeline is healthy, with more than 1,000 affordable apartments in the development process. As reported in June 2018 to the City Council in the Housing Department's FY 2017/18 - 2021/22 Affordable Housing Investment Plan, there were 594 affordable apartments under construction and an additional 441 affordable apartments in predevelopment. All forthcoming affordable apartments in San José funded by any funding source will count towards San José's RHNA goal, including those funded by County Measure A dollars.

As the Report notes, the City has established a 25% affordability goal in housing developed in Urban Villages, and has given affordable housing developments the ability to go in any Urban Village regardless of horizon. These changes will result in an increased pace of affordable housing production in the future years. And, the City is ahead of production targets for above-moderate homes in the current RHNA cycle (72% of the goal met at 46% of the way through the cycle).

The production of affordable homes in recent years also should be taken in context of San José's history of leadership in affordable housing. The City has worked for the past three decades to produce a substantial stock of more than 19,000 affordable homes. San José also fought for over five years for local government's legal right to create inclusionary housing programs. The City successfully defended its landmark court case through the State courts and to the U.S. Supreme Court. This important case was watched throughout California and the nation, and it strengthened all other communities' ability to create affordable housing.

As the largest jurisdiction in the County, it is San José's role and its commitment to produce a significant amount of both affordable and market-rate housing. Mayor Liccardo and the City Council continue to take a leadership position on housing. The City's housing goal of 25,000 in five years is the most aggressive in the area. Finally, the City Council's support for affordable housing production is clear, as it has placed a bond issuance of \$450 million on this fall's ballot. Staff believes this bond is the largest one being considered of any city in California.

## **EVALUATION AND FOLLOW-UP**

Upon the City Council's approval of the Response to the Grand Jury, staff will develop and submit the required letter to the Presiding Judge of the Superior Court on or before September 20, 2018. Staff will also include a list of sites that are located within one-half mile of a transit hub in the 2018 Housing Element Annual Progress Report as part of the City's Adequate Sites Inventory. The City Council will approve the 2018 Housing Element Annual Progress Report prior to the report's submission to the State in spring 2019.

### **POLICY ALTERNATIVES**

**Alternative:** *Do not approve the staff response or propose modifications to the response.*

**Pros:** Not submitting a report will save additional staff time that could be used more effectively on other initiatives.

**Cons:** San José would be on record not submitting a response to the Report, in violation of State Penal Code.

**Reason for not recommending:** Submitting a response to the Report is required.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's website for the September 11, 2018, City Council Agenda.

### **COORDINATION**

This memorandum was coordinated with the City Manager's Office, the Department of Planning Building and Code Enforcement, the Office of Economic Development, and the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

No Commission recommendation or input is associated with this action.

### **CEQA**

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/  
JACKY MORALES-FERRAND  
Director, Department of Housing

For questions, please contact Jacky Morales-Ferrand, Housing Director, at (408) 535-3855.

Attachment A: Civil Grand Jury of Santa Clara County – Affordable Housing Crisis *Density is Our Destiny* Report

Attachment B: Responses to the Grand Jury Report