

City of Piedmont
COUNCIL AGENDA REPORT

DATE: September 3, 2024

TO: Mayor and Council

FROM: Rosanna Bayon Moore, City Administrator

SUBJECT: Consideration of a Resolution Establishing a Policy for the Processing of Specific Residential Projects, as Requested by the California Department of Housing and Community Development (HCD)

RECOMMENDATION

Adopt the draft Resolution (Attachment A) establishing a policy for the processing of specific residential projects, as requested by the California Department of Housing and Community Development (HCD), and provide direction to City staff to begin preparing corresponding amendments to the zoning ordinance.

EXECUTIVE SUMMARY

This agenda item recommends adoption of a resolution that establishes a policy to clarify the City's compliance with State law and the City's Housing Element, as requested by HCD's Division of Policy Development. Upon review of the City's zoning ordinance amendments to implement the Housing Element, HCD noted issues that they believe require clarification with respect to program 1.R, "Lower-Income Sites Modifications to Address Shortfall." Program 1.R requires certain zoning amendments with respect to five sites intended to address the City's Regional Housing Needs Allocation (RHNA) shortfall, which sites are specified in the Background section below ("RHNA Shortfall Sites"). Although the City adopted zoning amendments to address these requirements, HCD is requesting further clarification and specificity as part of their Housing Element implementation review. HCD sent the City a "Letter of Technical Assistance" that noted the following areas that require clarification to ensure compliance with State law:

1. Confirm that the by-right approval process applies to the RHNA Shortfall Sites when a development application includes 20 percent or more housing units affordable to lower-income households;
2. Permit 100 percent residential development on mixed-use RHNA Shortfall Sites; and
3. Clarify that a minimum of 50 percent of the square footage in a mixed-use development on a RHNA Shortfall Site must be residential.

HCD's letter requests that the City revise its zoning ordinance or provide written documentation clearly demonstrating that the City has met the statutory requirements by the deadline of

September 6, 2024. HCD staff provided City staff with a draft resolution template that meets HCD's requirement to provide the requested documentation. Adoption of the recommended resolution would address HCD's concerns, although staff ultimately recommends the adoption of a revised zoning ordinance at a later date to clarify the issues noted by HCD.

BACKGROUND

On March 20, 2023, the City Council adopted Resolution No. 22-2023, adopting the Piedmont 6th Cycle 2023-2031 Housing Element, which was found to be in substantial compliance with State law by HCD on November 9, 2023.

Piedmont 6th Cycle Housing Element program 1.R "Lower-Income Sites Modifications to Address Shortfall," part 1, reads "Allow owner-occupied and rental multi-family use by-right for developments in which 20 percent or more of the units are affordable to lower-income households" at sites in zones A, B, and D identified for lower income housing units in the Housing Element sites inventory (Table B-11). Part 2 of program 1.R reads, "Require residential use occupancy of at least 50 percent of the total floor area of any mixed-use project on these sites." Program 1.R is discussed in the Analysis section of this report.

On September 5, 2023, the City Council adopted Resolution 56C-2023, approving amendments to the Piedmont Design Standards and Guidelines to establish objective standards for multifamily and mixed-use commercial and residential building types. In addition, on September 18, 2023, the City Council approved Ordinance 769 N.S., adding Division 17.67 to Chapter 17, Planning & Land Use (zoning ordinance), of the Piedmont City Code for Ministerial Design Review Permits, as well as amendments to implement objective standards for multifamily and mixed-use commercial and residential buildings, and others. Ministerial design review allows for by-right development, and it does not constitute a "project" under CEQA. As adopted, Division 17.67, Ministerial Design Review, is applicable to "any development which meets the eligibility criteria for ministerial review under State law," which would include projects that include lower-income housing on the RHNA Shortfall Sites. A ministerial design review application is processed by the Planning & Building Department without public hearings or public notice, subject to objective design standards.

On February 20, 2024, the City Council adopted Resolution No. 08-2024, adopting the Piedmont 6th Cycle 2023-2031 Housing Element Implementation Project Environmental Impact Report, pursuant to the California Environmental Quality Act (CEQA), and at the same meeting the Council adopted Resolution No. 09-2024, approving various General Plan amendments for the purpose of bringing the General Plan into consistency with the Piedmont 6th Cycle Housing Element and State law.

On March 4, 2024, the City Council approved Ordinance 772 N.S., amending Chapter 17, Planning and Land Use, of the Piedmont City Code to increase the permitted residential density in zones A, B, C, and D and to implement various Housing Element programs to meet the City's RHNA.

On December 21, 2023, HCD sent a Letter of Inquiry to the City of Piedmont regarding the completion of Housing Element program 1.R. City staff responded on January 21, 2024, stating that the City intended to amend the zoning ordinance in February 2024. Based on this

correspondence, HCD issued a corrective action letter to the City on February 5, 2024. On March 6, 2024, City staff responded to HCD's corrective action letter and also transmitted newly adopted City Council Ordinance No. 772 N.S.

City staff met with HCD staff in June 2024 to discuss questions raised by HCD about Ordinance No. 772 N.S. On August 7, 2024, as a result of this meeting, HCD staff sent a technical assistance letter (Attachment B) and a draft resolution template to the City. Staff notes that although HCD's correspondence discusses "re-zones," no re-zoning was required to implement any of the Piedmont 6th Cycle Housing Element programs. Rather, the City has amended the City's zoning ordinance.

ANALYSIS

As part of the City's Housing Element, Piedmont was required to identify a number of sites to address the City's RHNA shortfall at the time of adoption of the 6th Cycle Housing Element cycle, referred to as the "RHNA Shortfall Sites." The five RHNA Shortfall Sites are:

- 5201 Park Boulevard, Zion Community Church (2.22 acres)
- 898 Red Rock Road, City Corporation Yard (11.9 acres)
- 643 Moraga Avenue, City Corporation Yard Parking Lot (1.5 acres)
- 1337 Grand Avenue, Sylvan Learning Center (.63 acres)
- 1221 Grand Avenue, Ace Hardware (.65 acres)

These five sites have the capacity to produce 180 units of housing or more. Two of the sites are owned by the City of Piedmont and are within the area of the ongoing Moraga Canyon Specific Plan Study. The three privately held sites were selected in consultation with the property owners because they meet HCD eligibility requirements, including a lot size greater than ½ acre.

Housing Element program 1.R "Lower-Income Sites Modifications to Address Shortfall," includes the following language with respect to the RHNA Shortfall Sites (the full text of program 1.R is provided on pages 52 and 53 of the Housing Element, linked as Attachment C):

- "1. Allow owner-occupied and rental multi-family use by-right for developments in which 20 percent or more of the units are affordable to lower-income households....
- 4. Require residential use occupancy of at least 50 percent of the total floor area of any mixed-use project on these sites."

The above language from program 1.R was intended to implement Government Code Section 65583.2(h), which requires that cities allow development on properties identified in the Housing Element's sites inventory as accommodating the City's lower income RHNA through a by-right process if the project includes at least 20 percent lower-income housing. "By-right" is defined in Section 65583.2(i) as review that does not require any type of discretionary permit that would constitute a "project" for the purposes of the California Environmental Quality Act, although the City may still require design review. Section 65583.2(h) also requires cities to allow 100 percent residential use and require that residential use occupy 50 percent of the total floor area of a mixed-use project on mixed-use RHNA Shortfall Sites.

In Piedmont, the only two mixed-use district RHNA Shortfall Sites are the two Grand Avenue sites (“Mixed-Use RHNA Shortfall Sites”). HCD’s August 2024 letter specifically asks the City to clarify the completion of the implementation of program 1.R, by amending the City’s zoning ordinance or providing written documentation to demonstrate the following:

1. The allowance of by-right development on the RHNA Shortfall Sites when a development application includes 20 percent or more housing units affordable to lower-income households, those earning 80 percent or less of the Alameda County AMI.
2. The requirement to allow a 100 percent residential development on the two Mixed-Use RHNA Shortfall Sites.
3. The requirement of a developer of a mixed-use development on the two Mixed-Use RHNA Shortfall Sites to provide a minimum of 50 percent of the square footage as residential.

Although the City has adopted ordinances to address the requirements of program 1.R, HCD has requested more explicit language to confirm and clarify compliance with this program, as well as comply with State law. Staff recommends that the City Council adopt the attached resolution (Attachment A) and direct staff to begin to prepare amendments to the zoning ordinance to clarify the following:

1. Ministerial Review of Development Consisting of 20 Percent Affordable on RHNA Shortfall Sites

The attached resolution would confirm by-right review for projects on the RHNA Shortfall Sites that include 20 percent or more housing units affordable to lower-income households, defined as those earning 80 percent or less of the Alameda County AMI. As noted above, the City has already adopted permitted uses, a ministerial design review process, and objective design review standards. However, HCD has requested further clarification by the adoption of language that directly tracks the language of Government Code section 65583.2 regarding “by-right” development on RHNA Shortfall Sites.

2. 100 Percent Residential Development Allowed on Two Mixed-Use RHNA Shortfall Sites

The attached resolution would provide that a 100 percent residential project would be allowed on the two mixed-use RHNA Shortfall Sites. This would eliminate the requirement that commercial uses be built on the ground floor of development for these two sites. Although this requirement was not included in the implementation of program 1.R, it is a State law requirement, and thus, would be consistent with and would implement State law.

3. Requirement for 50 Percent Residential on Mixed-Use District RHNA Shortfall Sites

The attached resolution clarifies that a minimum of 50 percent of the square footage in a mixed-use development on the Mixed-Use RHNA Shortfall Sites must be residential. Currently, Piedmont Municipal Code Section 17.26.050.D, for Zone D, states that the “The maximum non-residential floor area is 50% of residential floor area.” HCD has requested that the City directly track the language from Government Code 65583.2 and provide in the zoning ordinance that 50 percent of the floor area of the two RHNA Shortfall Sites be residential.

CONCLUSION

In 2023, the first year of the Housing Element's 6th Cycle, the City of Piedmont made significant progress implementing the 77 housing programs outlined in the Housing Element. To meet the RHNA target by the end of the planning period, the City must issue 80 building permits annually, on average, in a range of housing affordability levels. HCD's technical guidance and the City's efforts to satisfy HCD guidance are intended to continue to increase housing production. City staff will bring forward new zoning ordinance amendments and programs to increase housing production in the coming months. Staff recommends that the City Council adopt the attached draft resolution as presented because it clarifies the City's compliance with State law and program 1.R of the Housing Element, as requested by HCD, and is further evidence of the City's ongoing commitment to implementation of the 6th Cycle Housing Element.

By: Pierce Macdonald, Senior Planner

ATTACHMENTS

Attachment A	Page 6-8	Draft Resolution
Attachment B	Page 9-10	HCD Letter, dated August 7, 2024
Attachment C	<i>Online</i>	City of Piedmont Housing Element, also available online on the City website at:

https://cdnsm5-hosted.civiclive.com/UserFiles/Servers/Server_13659739/File/LWC_Piedmont_HEU_Final_083123_compiled_compressed.pdf?v=Js5CLzDkC&v=Js5CLzDkC

RESOLUTION NO. ____**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PIEDMONT,
CALIFORNIA, ESTABLISHING A POLICY FOR THE PROCESSING OF SPECIFIC
RESIDENTIAL DEVELOPMENT PROJECTS CONSISTENT WITH GOVERNMENT
CODE SECTION 65583.2, SUBDIVISIONS (C), (H), AND (I)**

WHEREAS, on March 20, 2023, the Mayor and City Council adopted Resolution No. 22-2023, adopting the Piedmont 6th Cycle 2023-2031 Housing Element, which was found to be in substantial compliance with State law by the California Department of Housing and Community Development on November 9, 2023; and

WHEREAS, Government Code Section 65583.2 requires that cities allow development on properties identified in the Housing Element's sites inventory as accommodating the City's lower income Regional Housing Needs Allocation (RHNA) through a by-right process if the project includes at least 20 percent lower-income housing, and requires cities to "allow 100 percent residential use and require that residential use occupy 50 percent of the total floor area of a mixed-use project" on mixed-use district RHNA shortfall sites; and

WHEREAS, Piedmont 6th Cycle Housing Element program 1.R, Lower-Income Sites Modifications to Address Shortfall, part 1, reads "Allow owner-occupied and rental multi-family use by-right for developments in which 20 percent or more of the units are affordable to lower-income households," and part 4 reads, "Require residential use occupancy of at least 50 percent of the total floor area of any mixed-use project on these sites," at sites in zones A, B, and D identified for lower income housing units in the Housing Element sites inventory (Table B-11), in compliance with Government Code Section 65583.2, Subdivisions (c), (h), and (i); and

WHEREAS, on September 5, 2023, the City Council adopted Resolution 56C-2023, approving amendments to the Piedmont Design Standards and Guidelines to establish objective standards for multifamily and mixed-use commercial and residential building types; and

WHEREAS, on September 18, 2023, the City Council approved Ordinance 769 N.S., adding Division 17.67 to Chapter 17, Planning & Land Use (zoning ordinance), of the Piedmont Municipal Code for Ministerial Design Review Permits, as well as amendments to implement objective standards for multifamily and mixed-use commercial and residential buildings, as well as other amendments; and

WHEREAS, on February 20, 2024, the City Council adopted Resolution No. 08-2024, adopting the Piedmont 6th Cycle 2023-2031 Housing Element Implementation Project Environmental Impact Report (SCH No. 2022020362) pursuant to the California Environmental Quality Act, and at the same meeting the Council adopted Resolution No. 09-2024, approving various General Plan amendments for the purpose of bringing the General Plan into consistency with the adopted Piedmont 6th Cycle Housing Element and State law; and

WHEREAS, on March 4, 2024, the City Council approved Ordinance 772 N.S., amending Chapter 17, Planning and Land Use, of the Piedmont City Code to implement Housing Element

programs to increase the permitted residential density in zones A, B, C, and D, as well as other Housing Element programs to meet the City's RHNA; and

WHEREAS, on August 7, 2024, HCD sent Piedmont a "Letter of Technical Assistance," requesting that the City amend the City's zoning ordinance or provide written documentation to demonstrate the following: (1) the allowance of by-right development on the five RHNA shortfall sites in zones A, B, and D when a development application includes 20 percent or more housing units affordable to lower-income households; (2) the requirement to allow a 100 percent residential development on the mixed-use RHNA shortfall sites; and (3) the requirement of a developer of a mixed-use development on the mixed-use RHNA shortfall site to provide a minimum of 50 percent of the square footage in a mixed-use development to be residential; and

WHEREAS, the City has adopted ordinances to address the requirements of Housing Element program 1.R, and desires to confirm and clarify compliance with this program, as well as State law, as requested by HCD.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Piedmont, as follows:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. The City Council hereby directs City staff to:

A. Allow projects with at least 20 percent or more units affordable to lower-income individuals through a by-right process per Government Code Section 65583.2, Subdivisions (c), (h), and (i), on sites identified in Table B-11 of the Piedmont 6th Cycle 2023-2031 Housing Element to accommodate the lower income RHNA. For this purpose, "by-right" means that the City shall not require a Conditional Use Permit, Planned Unit Development Permit, or other discretionary review or approval that would constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.

B. Allow 100 percent residential projects per Government Code Section 65583.2, Subdivisions (c), (h), and (i), on mixed-use sites, identified in Table B-11 of the Piedmont 6th Cycle 2023-2031 Housing Element to accommodate the lower-income RHNA.

C. Require a developer of a mixed-use development on mixed-use sites, identified in the lower-income category of Table B-11 of the Piedmont 6th Cycle 2023-2031 Housing Element, to provide a minimum of 50 percent of the square footage in a mixed-use development as housing.

SECTION 3. The City Council finds this Resolution is not subject to the California Environmental Quality Act (CEQA) in that the activity described in this Resolution is covered by the 2023-2031 Housing Element Implementation Project EIR adopted by Resolution No. 08-2024.

SECTION 4. The documents and materials associated with this Resolution and that constitute the record of proceedings on which these findings are based are located at 120 Vista Avenue, Piedmont, CA 94611. The City Clerk is the custodian of the record of proceedings.

SECTION 5. Severability: If any section, subsection, subdivision, sentence, or clause or phrase in this Resolution or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Resolution or any part thereof. The Mayor and City Council hereby declares that it would have adopted each section irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional, invalid, or ineffective.

SECTION 6. Effective Date. This Resolution shall become effective immediately.

(End of Resolution)

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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August 7, 2024

Rosanna Bayon Moore, City Administrator
City of Piedmont
120 Vista Avenue
Piedmont, CA 94611

RE: City of Piedmont Rezone Implementation – Letter of Technical Assistance

Dear Rosanna Bayon Moore:

The purpose of this letter is to provide technical assistance regarding the implementation of Program 1.R (Lower-Income Sites Modifications to Address Shortfall) to rezone sites to accommodate the Regional Housing Needs Allocation (RHNA) pursuant to Government Code section 65585, subdivision (i).

On December 21, 2023, the California Department of Housing and Community Development (HCD) sent a Letter of Inquiry to the City of Piedmont (City) regarding the completion of Program 1.R. HCD received written response from the City on January 21, 2024, stating that the City intended to adopt the required rezones until February of 2024. Based on this correspondence HCD issued a corrective action letter to the City on February 5, 2024. On March 6, 2024, HCD received Ordinance No. 772 N.S. from the City in response to the corrective action letter. HCD reviewed the documentation submitted by the City and has determined that, while the ordinance meets several requirements of state law, the City must demonstrate the rezonings meet all requirements in Government Code section 65583.2, subdivisions (h) and (i).

Specifically, while it appears that more than 50 percent of the City's identified RHNA shortfall is met on mixed-use sites, the ordinance does not state if these mixed-use sites permit 100 percent residential development and require a minimum of 50 percent of the square footage in a mixed-use development to be residential. Additionally, the ordinance does not indicate if the City permits owner-occupied and rental multifamily uses by-right for developments in which 20 percent or more of the units are affordable to lower-income households. By-right means local government review must not require a conditional use permit, planned unit development permit, or other discretionary review or approval that that would constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.¹

¹ Gov. Code, § 65583.2, subd. (i)

HCD requests that the City revise its zoning ordinance or provide written documentation clearly demonstrating the rezones meet these statutory requirements. If needed, a copy of the revised ordinance should be transmitted to HCD. HCD will review the documentation and issue correspondence before taking any action authorized by Government Code section 65585, subdivisions (i) and (j). Such action may include issuance of written findings (Corrective Action Letter) and revoking HCD's finding that the City's housing element is in substantial compliance with Housing Element Law and/or referral to the California Office of the Attorney General.

HCD provides the City until September 6, 2024 to provide a written response to these findings. If you have questions or need additional information, please contact Reid Miller at Reid.Miller@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melinda Coy', followed by a long, sweeping horizontal line.

Melinda Coy
Proactive Housing Accountability Chief