

July 20, 2010
City Manager's Office
City Attorney

TITLE: APPROVAL OF TENTATIVE AGREEMENT/SETTLEMENT TERM SHEET CONCERNING *Urban Habitat v. City of Pleasanton* LITIGATION AND DRAFT RESOLUTION AMENDING EXISTING NON-DISCRIMINATION IN HOUSING POLICIES

SUMMARY

On April 6 and 20, 2010, the City Council conducted public meetings for the purpose of informing the public of the March 12, 2010 Superior Court ruling in the *Urban Habitat v. City of Pleasanton* litigation. Since receiving public comment regarding potential courses of action relating to the litigation, the City Council has been working with Urban Habitat, Public Advocates, Inc. and the Attorney General's Office, in an attempt to reach a settlement of the entire case. This report describes a tentative settlement agreement/settlement term sheet (Tentative Agreement) which has been reached between representatives of all parties. If approved by the City Council, this matter along with all outstanding litigation against the City will be dismissed upon final adoption by the City Council on August 17, 2010 (including three pending unresolved claims/lawsuits related to the General Plan and the City's housing policies). As part of the settlement terms, the City's existing non-discrimination in housing policies are to be strengthened, and a resolution making such modifications is provided for the City Council's consideration.

RECOMMENDATION

1. Authorize the City Manager to execute the Tentative Agreement/Settlement Term Sheet (Attachment 1).
2. Authorize the City Attorney to prepare a settlement agreement embodying the concepts and provisions set forth in the Tentative Agreement/Settlement Term Sheet.
3. Direct the City Manager to place the settlement agreement on the August 17, 2010 City Council agenda for approval.
4. Approve the attached draft resolution (included as an attachment to the Tentative Agreement) approving enhancements to the City's existing non discrimination housing policies.
5. Authorize staff to begin preparing resolutions, ordinances and agreements consistent with the terms set forth in the Tentative Agreement.

FINANCIAL STATEMENT

The Tentative Agreement requires the payment of attorney's fees equaling \$995,000 within thirty days of the settlement agreement (anticipated on August 17) and an additional \$995,000 within thirty days of July 1, 2011. These payments will be approved formally upon approval of the settlement agreement, at which time staff intends to recommend the use of the Self-Insurance Retention fund (218) for the initial payment. The second payment will be addressed as part of the 2011-12 Budget.

BACKGROUND

In November 2006, Urban Habitat filed a lawsuit against the City claiming that various City policies and ordinances prevent or hinder the development of affordable housing in Pleasanton during what is known under the State Housing Element Law (Government Code section 65583 *et seq.*) as the "Third Planning Period" ending in 2009. The Petitioners' complaint, which was amended in 2009 to assert similar claims arising in connection with the City's housing requirements for the Fourth Planning Period, and which the State Attorney General then joined, alleged (among other claims):

- that the City's Housing Cap violates state law in a number of respects, including that the Cap prevented the City from accommodating its regional "fair share" housing numbers ("RHNA"), and sought to have the Cap declared invalid.
- that the City failed to carry out mandatory duties under Program 19.1 of the 2003 Housing Element, and under the so-called Least Cost Zoning Law (Government Code section 65913.1 *et seq.*), namely, that the City failed to zone sufficient property to accommodate its regional affordable housing obligations.
- that the City failed to carry out mandatory duties under another General Plan program by failing to amend its Growth Management Ordinance to override the annual housing allocation in order to meet regional housing needs.

In addition, the Attorney General filed a separate lawsuit in 2009 challenging the City's 2009 General Plan update. That lawsuit asserted claims that the General Plan update EIR was inadequate under the California Environmental Quality Act (CEQA), and that the update itself violated State law in several respects. The Attorney General and the City agreed to suspend litigation on the General Plan lawsuit pending the outcome of the Urban Habitat litigation.

On March 12, 2010, the Court issued a decision in the Urban Habitat matter which may be distilled as follows:

- the Cap conflicts with State law RHNA requirements.
- the City cured any defects in its Growth Management Ordinance by its recent (October 2009) amendment allowing the Council to override the ordinance to satisfy RHNA requirements.

- the City failed to carry out a mandatory duty, under Program 19.1 of the 2003 Housing Element and under the Least Cost Zoning Law, to rezone sufficient properties to high density residential (e.g., 30 units/acre) in order to accommodate the remaining housing units required for the Third Planning Period. Although in October 2009, the City Council rezoned properties in the Hacienda Business Park to meet this obligation, the Court agreed with Urban Habitat that this rezoning was “illusory,” and did not satisfy Program 19.1 or State law because it did not actually allow development to occur until after completion of the Hacienda PUD amendment process that is anticipated to last at least one year.

The Court’s order invalidates the Cap in its entirety. It also directs the City to:

- “cease and desist” from enforcing, administering and/or implementing the Cap.
- remove references to the Cap from its General Plan.
- affect sufficient, “non-illusory” rezonings to accommodate the “unmet” RHNA (521 units) for the Third Planning Period.
- cease issuing any non-residential building and all related permits for construction or development until it brings its General Plan into compliance.

To fully inform the public of the Court decision, and solicit complete public involvement, the City Council held public meetings on April 6 and 20 during which potential responses to the Court ruling were discussed (The agenda reports for those meetings are included as Attachment 3). While a range of comments were presented to the Council, many members of the public expressed an interest in resolving all legal matters as expeditiously as possible. In addition, many members of the public stated their concern over continued legal appeals/challenges and the expenses stemming from continuing this legal dispute. In response, and in view of information provided by staff and legal counsel, the City Council decided to pursue a settlement of the entire lawsuit and related second lawsuit and through it discussions, five general goals were identified upon which settlement options were evaluated. The five goals are as follows:

- Retain local control and flexibility to the maximum extent possible relative to the Hacienda rezonings and development process, including retention of a meaningful role for the Hacienda Task Force and public input;
- Restore City’s non-residential permitting authority as quickly as possible;
- Retain control over the City Housing Element update process to assure it reflects both State law and the interests of the community;
- Reach a global settlement that addresses the Court’s entire March 12, 2010 ruling as well as other outstanding litigation;
- Minimize financial impacts of the litigation.

To facilitate the negotiations, the City Council appointed Mayor Hosterman and Councilmember McGovern to serve on a negotiating team, including the City Manager,

City Attorney, the City's contract legal counsel and various staff members, for the purpose of attempting to reach a settlement agreement. Numerous negotiations have occurred over the past few months which have resulted in the Tentative Agreement (Attachment 1). The negotiating team has determined that the Tentative Agreement meets the City Council's settlement goals, and as a result, the Tentative Agreement is being recommended for approval. This public hearing provides the public with an opportunity to comment on the proposed settlement terms prior to execution of the settlement agreement.

DISCUSSION

The Tentative Agreement has been approved by the Petitioners (Urban Habitat and Public Advocates) and the State Attorney General's Office. It will act as the basis for preparation of a settlement agreement that will more specifically memorialize the settlement. Based on the implementation schedule (see Attachment 2), the Settlement Agreement will be presented to the City Council for adoption on August 17. For organizational purposes of this agenda report, a summary of the Tentative Agreement has been separated into terms and impacts regarding those matters Related to the Court Order and those matters and impacts related to resolving the remaining, unadjudicated causes of action in the Urban Habitat lawsuit and the second lawsuit brought by the Attorney General's Office but not prosecuted against the City of Pleasanton (Matters Not Specific to the Court Order).

SUMMARY OF MATTERS RELATED TO THE COURT ORDER

Housing Cap

While the City Council has been well aware of the voters' interest over the years in retaining limits to the number of allowable housing units in Pleasanton, the Court Order states definitively that the City must "cease and desist" from enforcement of its current Housing Cap, and remove all references to the Cap from the City's General Plan. Therefore, in recognition of this, the Tentative Agreement reflects the City's intent to amend the General Plan to eliminate references to the Housing Cap (General Plan Policy 24 and Programs 24.1, 24.2 and 24.3; in addition, several other provisions of the City's General Plan that refer to the Cap also will be deleted). The attached implementation schedule outlines the timeline for steps necessary to amend the General Plan and other actions related to the Tentative Agreement.

Alternatives to the Existing Housing Cap

Throughout the litigation proceedings and settlement negotiations, the City Council has been cognizant of public concern over amending the General Plan to remove the voter approved housing cap. Unfortunately, it has been determined that the housing cap is no longer consistent with State law because it provides a barrier to appropriately plan (e.g. zone) for regional housing obligations as mandated by the State of California. These requirements are consistently applied to every municipality and county jurisdiction in California. As a result, in this instance, State housing laws now preempt the City's housing cap.

In recognition of this preemption, at its April public meetings the Council discussed alternative growth management measures that it intends to pursue as part of or in conjunction with the Housing Element process. For example, the Council could utilize the Housing Element process to amend its current growth management ordinance to specifically reference City-wide standards for services and infrastructure such as intersection level of service, sewer capacity and water supply, and acres of parkland per 1,000 in population. (The current growth management ordinance provides for the City Council to use the information related to services and infrastructure included in the periodic Growth Management Report to evaluate the capacity to serve additional growth.)

Another approach would be to develop a growth management program that would align future growth with the major themes of the General Plan. For example, if sustainability were a priority objective, measures could be developed that would score projects based on energy and water use, potential vehicle miles traveled, Green Building score, or estimated greenhouse gas emissions, and so on, and could require development to attain a minimum score to advance in the development process.

Regardless of the final outcome, it is anticipated that amending the General Plan to remove the housing cap will result in the implementation of new growth management measures that are consistent with State law, the settlement agreement, the Council's long range planning goals, and the City's emphasis on protecting and enhancing the community's quality of life.

It should also be noted that the General Plan Land Use Element, Policy 24 incorporates language established by Measures PP and QQ that further defines housing units to be counted against the Housing Cap and this language will be removed and part of the amendment process. However, Measure PP and QQ language regarding limitations to hillside development, as currently incorporated in the General Plan will not be amended.

Hacienda Rezonings

The Court determined that the rezoning of three sites in Hacienda Business Park (including BRE, WP Carey and Roche) as set forth in Ordinance 1998 do not satisfy Program 19.1 of the current Housing Element or State law because they do not actually allow development to occur until after completion of the Hacienda PUD amendment process. As a result, the Court ruled that "land zoning and land-use changes need to be implemented such that they are without condition or need of future discretionary approval." As outlined in the attached April 20 agenda report, the rezonings are necessary to address the 1999-2007 Regional Housing Need Assessment (RHNA) which sets forth the City's obligation to plan for additional housing units as determined by the State. Notwithstanding the Court order, the City Council determined that retaining its land use control over the Hacienda rezonings and development process, including retention of a having an important effect role for the Hacienda Task Force, was critical to reaching a settlement agreement. In view of this goal, the Tentative Agreement establishes a City directed process for the Hacienda development that includes three broad areas: core development standards, a public process for establishing additional development standards and design guidelines and project approval.

The Core Development Standards establish the number, type and location of affordable units to be included on the three sites. In general, these terms are consistent with the City's Inclusionary Zoning Ordinance (IZO) and mandate that 15%, or 130 units which ever is more, be made available at rents affordable to households at the very low income level and that these units be dispersed throughout the development. In addition to affordability standards, the Core Development Standards establish that project density will be at a minimum of 30 units per acre resulting in a total of approximately 870 units on the three sites.

While consistent with the City's inclusionary zoning ordinance, execution of the Settlement Agreement will restrict the Council's ability to accept or require affordability and/or project density that is less than provided for in the Tentative Agreement. While the Core Development Standards are consistent with the IZO, and will be presented to the Task Force for its information, they must be approved as included in the Tentative Agreement. The City has no discretion in this regard. The Task Force will, however, continue to have a significant role and discretion in determining project design guidelines and other development standards (referred to in the Tentative Agreement as "non core development standards"), which include the amount of retail space, project design (including building height, massing and materials), and amenities such as open space, parking, etc. Following the Task Force's recommendation regarding the project's design guidelines and non-core development standards, the City Council will adopt PUD ordinances setting forth the overall elements for projects, including all appropriate environmental review, at these locations. Upon receipt of a development application for any of the three sites, the City Council will use its discretion to adopt conditions relative to the interpretation of the PUD ordinances' non core development standards, but will not have discretion to deny an application for a housing development that meets the PUD ordinance core development standards.

Update to the Housing Element

The Tentative Agreement stipulates that within one year of the settlement agreement date, the City will submit to HCD its updated Housing Element and complete any rezonings required to meet the current RHNA. An update of the City's Housing Update was already part of the Community Development Department's work plan. The Tentative Agreement does not impact the overall Housing Element process nor does it require specific language for goals and programs that will be included in the document. It does, however, require that the process, as determined by the City Council, will include: (1) a discussion with non-profit affordable housing developers; (2) identification of affordable housing sites that would be most competitive for award of Lower Income Housing Tax Credits; (3) the adoption of goals and programs promoting affordable housing for families and special needs housing; and (4) the inclusion of one or more programs, as determined by the City Council, to attract non-profit affordable housing development for families for the identified affordable housing sites. (These items are outlined in Attachment A to the Tentative Agreement.) Similar to the Hacienda rezonings, retaining local control of planning matters was critical to the Council's focus in the discussion related to the Housing Element, and the Tentative Agreement addresses the Council's interest. Moreover, staff believes this approach will be mandated by HCD in its review of the City's Housing Element update.

Issuance of Building Permits

The Court Order requires the City to cease issuing non-residential building permits and all related building permits for any construction or development until the City brings its General Plan into compliance with the requirements of State Law. As a result, the Council's goal has been to restore the City's permitting authority as quickly as possible and this interest was one of the fundamental reasons for entering into a settlement agreement. Further, the City's legal counsel has advised that pursuing additional litigation would likely result in retention of the permit restriction for some undetermined period in the future. The Tentative Agreement provides that upon its approval, permits will be approved by the Petitioner and Intervenor subject to an interim review process to be agreed upon by the parties, likely allowing for immediate approval of applications that do not increase square footage, and such interim process would apply only to the period between approval by the City Council of the Tentative Agreement and execution of the final settlement agreement (i.e. for approximately a one month). The City's full permitting authority will be restored unconditionally at the time settlement agreement is approved by the City Council (scheduled for August 17).

SUMMARY OF MATTERS NOT SPECIFIC TO THE COURT ORDER

As the Council is aware, the Court did not rule on all matters of litigation. Specifically, it did not rule on claims of housing discrimination and the inadequacy of the City's General Plan's Environmental Impact Report analysis of green house gas impacts. Because one of the City Council's goals was to resolve all litigation, the Tentative Agreement includes matters not addressed in the Court's March 12, 2010 order. A summary of these are as follows.

Non-Discrimination

The Tentative Agreement requires City Council adoption of a resolution approving certain non-discrimination housing policies. The resolution, which is included as Attachment A to the Tentative Agreement, includes a specific statement of non-discrimination and a requirement for the City Manager to report regularly to the City Council on the City's efforts to fulfill the non-discrimination policy and the City's plans and proposals to attract well designed affordable housing for families with children in the future. Staff believes this resolution is not substantially different from the City's existing non-discrimination policies set forth in the existing Housing Element, and as applied by the City.

Environmental Matters

To address concerns raised regarding the adequacy of the greenhouse analysis prepared as part of the General Plan's Environmental Impact Report, the City is agreeing to prepare a Climate Action Plan, following the completion of an environmental impact report. It is important to note that the adoption of such a plan is also a requirement of state law (e.g. AB 32) and highly encouraged by the Bay Area Air Quality Management District. It is also a requirement of the City's General Plan. The Climate Action Plan will

be completed within eighteen months of the settlement date. The contract and proposal detailing the full scope of the Climate Action Plan, which has been in the planning process independent of the litigation for some time now, is included as a separate item on this agenda. In addition, the Tentative Agreement establishes that the City will conduct appropriate environmental analysis, in accordance with CEQA guidelines for actions identified in the Tentative Agreement including the Hacienda rezonings. The level of analysis anticipated is consistent with the City's process used typically for these types of projects.

No Additional Litigation

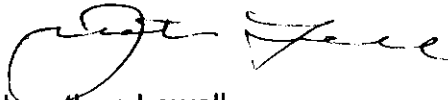
To assure no additional litigation related to these matters, all parties agree to dismiss the General Plan/CEQA litigation and the two remaining discrimination causes of action in the litigation and to not pursue additional litigation regarding the Housing Cap and the Hacienda rezonings. Further, the Tentative Agreement establishes an enforcement process that retains the Court's jurisdiction to effectuate the provisions of the Settlement Agreement. However, if a dispute arises, the opportunity for mediation is available.

Attorney's Fees

Under a provision of State law known as the "private Attorney General" statute (Code of Civil Procedure section 1021.5), advocacy groups who are successful in enforcing public laws are often entitled to recover their attorneys fees from the public agencies they successfully sue. This law allows not only for the recovery of fees actually paid, but also for "enhanced" fees based on market rates and "multipliers" based on the length, difficulty and complexity of the litigation. In this case, Urban Habitat has provided the City with information supporting a "base" fee claim of nearly \$3 million, and has asserted an entitlement to multipliers that would elevate their claim to an amount exceeding \$4 million if the matter were to be litigated.

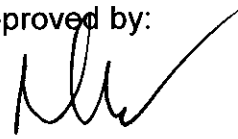
Since the start of the settlement process the City Council has expressed an interest in negotiating a more reasonable attorneys' fee award, and in having that be part of any settlement agreement. While the City could pursue an alternative of litigating attorney's fees, this would be inconsistent with the global settlement focus of the Tentative Agreement and could very well result in higher (potentially twice the settlement amount) attorney's fees. As a result, the negotiating team was successful in reaching what it believes is a reasonable compromise on the amount of the fees. That compromise—\$1.99 million payable over two fiscal years—is reflected in the Tentative Agreement. It should be noted that the Attorney General's Office has decided not to claim fees. As a result, the full fee amount will be paid to the Petitioners, Urban Habitat et al. The two fee payments are in addition to the expenses paid since 2006 to the City's private legal counsel to defend the case.

Submitted by:



Jonathan Lowell
City Attorney

Approved by:



Nelson Fialho
City Manager

Attachment

1. Tentative Agreement/Settlement Term Sheet, including Exhibit A "A Resolution of the City Council of the City of Pleasanton Approving Enhancements to Existing Non-discrimination Housing Policies."
2. Tentative Agreement/ Settlement Term Sheet Implementation Schedule
3. City Agenda Report Dated April 20, 2010.

Tentative Agreement /Settlement Term Sheet
Urban Habitat et al. v. City of Pleasanton
July 20, 2010

(This document has been prepared in furtherance of settlement negotiations. The provisions of California Evidence Code section 1152 specifically apply.)

Housing Cap

No later than October 19, 2010, the City Council will amend its General Plan eliminating Policy 24 and Programs 24.1, 24.2 and 24.3 and making revisions to other General Plan and Housing Element text.

Housing Element

Within one year of the settlement date the City will submit to the HCD an amended Housing Element. The City will adopt the Housing Element within 90 days after receiving a response from HCD however, extensions may be granted for unique and unforeseen circumstances. A draft site inventory will be released within 180 days of the settlement date and rezonings will be completed prior to or concurrent with adoption of the Housing Element. An environmental impact report will be prepared for the Housing Element.

Climate Action Plan

Within 18 months of the settlement date the City will adopt a Climate Action Plan, including completion of an environmental impact report that will address the allegations raised by the Attorney General with regard to the General Plan CEQA complaint.

Non-discrimination

No later than August 17, 2010, the City will adopt a resolution adopting the proposed non-discrimination clause substantially as set forth in Exhibit A hereto. In fulfillment of this objective, the City will study and evaluate housing element programs related to creating programs that promote non-profit housing development for families, as well as special needs households and that strengthen and promote construction of affordable units for families. The City will undertake this effort as part of the City's housing element update, which is subject to public input and community participation.

No Additional Litigation

City agrees not to pursue appeal or other/further litigation; Petitioners and Intervener agree to dismiss the General Plan/CEQA litigation and two remaining discrimination causes of action in Urban Habitat litigation, and to not pursue additional litigation regarding Housing Cap and Hacienda rezonings and or the General Plan/CEQA.

City Permitting Authority

Petitioners and Intervener agree to set criteria to allow for the approval of any building permits from time of tentative settlement agreement until the settlement date. As of the date of the settlement agreement, the City's full permit authority shall be restored completely and without limitation of any kind.

Attorney's Fees

City will pay \$995,000 within 30 days of the settlement date and additional \$995,000 no later than 30 days after July 1, 2011.

CEQA

City will conduct appropriate environmental analysis in accordance with CEQA guidelines for actions identified in this Settlement Term Sheet.

Enforcement

Develop an enforcement provision indicating the Court will retain continuing jurisdiction to effectuate the provisions of the Settlement Agreement until such time that the City has completely performed the terms of the Agreement. Petitioners and Intervenor shall give written notice to City regarding potential breach and the parties shall meet and confer within fourteen (14) business days of such notice before any party seeks judicial enforcement.

Hacienda Rezonings (pertaining only to three sites zoned previously)

1. No later than November 2, 2010, the City Council will approve the second reading of an ordinance amending Ordinance 1998 to remove paragraph 5, PUD Modification Contingency.
2. Development Standards, Design Guidelines and Application Process

A. Phase I Core Development Standards

Within 120 days of the settlement date, the City Council will approve the following Core Development Standards:

Density: Minimum 30 units per acre

Affordability:

- Income Ranges:
The greater of: (a) 15% of units of all units, or (b) 130 units, will be very low income (50% of AMI). Through the affordable housing agreements entered into between the City and each developer, affordable units will be deed restricted in perpetuity. The affordable housing agreements will be recorded and run with the land.
- Section 8 Rental Assistance Vouchers:
The developments will be required by the affordable housing agreements entered into between the City and each developer to accept HUD Section 8 rental vouchers as a means of assisting qualified applicants.
- Affordability Unit Mix:
 - 10% of the total affordable units will be 3 bedroom units
 - A minimum of 35% of the total affordable units will be two bedroom units
 - The remaining affordable units will be one bedroom units
- Location of Affordable Units:
All affordable units will be dispersed throughout the development.

B. Phase II Non core development standards and Design Guidelines

Within 180 days of the settlement date, the City will develop non-core development standards and Design Guidelines for the three Hacienda sites that are not inconsistent with the Core development standards.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLEASANTON,
APPROVING ENHANCEMENTS TO EXISTING NON DISCRIMINATION HOUSING
POLIICIES**

WHEREAS, in 2003, the Pleasanton City Council adopted a Housing Element; and

WHEREAS, the City's Housing Element includes goals and programs that prohibits discrimination to housing opportunities in Pleasanton, including the goal of identifying and making special provisions for the community's special needs housing; and

WHEREAS, the City is about to embark on an update to the existing Housing Element; and

WHEREAS, through adoption of this resolution, the City Council reaffirms its position on housing non-discrimination, and

WHEREAS, it is the intent of the City Council to update its Housing Element goals and programs through study and consideration of adoption of additional goals and programs related to eliminating discrimination in the areas of affordable housing for families with children and senior citizens as part of its Housing Element update process.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PLEASANTON CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That the Council does hereby adopt the following Non-Discrimination Policy:

In recognition of State and Federal laws which prohibit municipalities from discriminating against developers of affordable housing, including non-profit developers of affordable housing, and from discriminating against families with children in need of affordable housing, it is the official policy of the City of Pleasanton, that the City staff and the City Council will act affirmatively to promote the development of well-designed affordable housing for families with children in Pleasanton. The City Manager will report regularly to the City Council on the City's efforts to fulfill this policy, the success of those efforts, and plans and proposals to attract well-designed affordable housing for families with children in the future.

SECTION 2. As part of its Housing Element update process the City will study and consider adoption of goals and programs promoting affordable non-profit housing development for families, as well as for other special needs households, including strengthening existing programs to promote construction of affordable three bedroom units for large families and including the goal of building affordable family units and affordable senior units in proportion to the need for each.

SECTION 3. As part of the Housing Element Update process, the City staff will conduct analysis and prepare information for review by the public and consideration of

adoption by the City Council, related to Sections 1 and 2 above. This analysis will include identifying sites that may be most competitive for Low Income Housing Tax Credits based on the "site amenities" point criteria included as part of the California Tax Credit Allocation Committee Application. Following the public review process for the Housing Element, which will include discussion with non-profit affordable housing developers, and identification of the most competitive sites for Lower Income Housing Tax Credits, the City Council will adopt and implement one or more programs to attract non-profit affordable housing development for families for the identified sites. Such program(s) shall not preclude non profit housing developments on sites other than the identified sites. The City will also study its existing Lower Income Housing Fee and Inclusionary Housing Ordinance to determine if it is appropriate to increase the amount of the fee or percentage of affordability to support affordable housing development.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Pleasanton at a regular meeting held on XXXX XX, 2010.

I, Karen Diaz, City Clerk of the City of Pleasanton, California, certify that the foregoing Resolution was adopted by the City Council at a regular meeting held on the ___ day of ___, 2010, by the following vote:

Ayes:
Noes:
Absent:

Karen Diaz, City Clerk

APPROVED AS TO FORM:

Jonathan P. Lowell, City Attorney

Schedule for Tentative Agreement/ Settlement Term Sheet Urban Habitat et al v. City of Pleasanton
7/20/10

DATE	BODY	ITEM
July 20, 2010	City Council	Approval of Settlement Term Sheet/Tentative Agreement and authorization to prepare Settlement Agreement
July 20, 2010	City Council	Approval of agreement for consultant services to prepare the City's Climate Action Plan
July 20, 2010	City Staff	Release of notice to Native American tribes indicating City's intent to amend its General Plan (90 days/ GC§ 65352.3(a))
July 21, 2010	City Staff	Release draft revisions to the Housing Element to State HCD regarding intent to eliminate housing cap (45 days/ GC§ 65754(a))
August 17, 2010	City Council	Approval of Settlement Agreement
August 17, 2010	City Council	Approval of City non discrimination resolution
September 7, 2010	City Council	Approval of agreement for consultant services to prepare Housing Element Update
September 15, 2010	Planning Commission	Review of amendments to the General Plan and Housing Element regarding removal of the housing cap
September 15, 2010	Planning Commission	Recommendation of amendment to PUD 1988 concerning removal of section 5
September 16, 2010	City Staff	Issuance of first payment for attorney fees
October 19, 2010	City Council	Approval of resolution removing the housing cap from General Plan, including the Housing Element
October 19, 2010	City Council	Introduction of ordinance amending PUD 1998 to remove Section 5
November 2, 2010	City Council	Second reading of ordinance amending PUD 1998
December 7, 2010	City Council	Introduction of ordinance establishing Core Development Standards for three Hacienda sites (final date is December 22, 2010)
January 4, 2011	City Council	Second reading of ordinance establishing Core Development Standards for three Hacienda sites
February 15, 2011	City Council	Introduction of ordinance establishing non-core development standards and design guidelines for three Hacienda sites
February 20, 2011	City Staff	Final day to release Housing Element site inventory
March 1, 2011	City Council	Second reading of ordinance establishing non-core development standards and design guidelines for three Hacienda sites
July 31, 2011	City Staff	Issuance of second payment for attorney fees
August 16, 2011	City Staff	Transmit Draft Housing Element Update to State HCD (City to adopt Housing Element within 90 days after receiving a response from HCD, however extensions may be granted for unique and unforeseen circumstances.)
February 17, 2012	City Council	Adoption of Climate Action Plan

Note: Ordinances are effective 30 days following second reading/adoption



ATTACHMENT 3

CITY COUNCIL AGENDA REPORT

April 20, 2010
Community Development
Planning Division

TITLE: PUBLIC MEETING TO PROVIDE INFORMATION TO AND RECEIVE INPUT FROM THE PUBLIC REGARDING THE JUDGE'S ORDER IN *Urban Habitat v. City of Pleasanton* AND POSSIBLE CITY COUNCIL ACTIONS IN RESPONSE TO IT

SUMMARY

This item follows up on the April 6, 2010 agenda report (Attachment 1) which provided an overview of the *Urban Habitat* litigation and the recent Court order, and briefly touched on the options available to the Council. This agenda report provides additional information regarding the origin of the housing cap, an overview of Regional Housing Needs Assessment (RHNA) requirements, an outline of the Housing Element process, a description of the City's growth management ordinance, and a more detailed discussion of the options available to the City. The City Council is seeking public input prior to deciding on a course of action on this matter.

RECOMMENDATION

This is an informational item to facilitate public input regarding this issue and, as such, no action is anticipated at this meeting.

FINANCIAL STATEMENT

The City's legal expenses litigating this case since its inception in the fall of 2006 are approximately \$500,000. (This reflects only the City's legal expenses paid to its own outside legal counsel. It does not reflect work performed by the City Attorney's Office nor any staff time or resources expended in providing a defense to the City.) Depending on the City's response to the Superior Court's ruling, potential future legal expenses are conservatively estimated to be \$250,000.

The City will also face claims for Petitioners' and Intervener's legal expenses, which likely will be considerably higher than the City's own legal fees, as two parties are involved. Similarly, should the City pursue further litigation, their future legal costs will be more, and the City could find also itself liable for payment of those fees.

OVERVIEW

In November 2006, Urban Habitat filed litigation against the City claiming that various City policies and ordinances prevent or hinder the development of affordable housing in Pleasanton during what is known under the State Housing Element Law (Government Code section 65583 *et seq.*) as the “Third Planning Period” ending in 2009. The lawsuit alleged (among other claims):

- that the City’s Housing Cap violates state law in a number of respects, including that the Cap prevented the City from accommodating its regional “fair share” housing numbers (“RHNA”), and sought to have the Cap declared invalid.
- that the City failed to carry out mandatory duties under Program 19.1 of the 2003 Housing Element, and under the so-called Least Cost Zoning Law (Government Code section 65913.1 *et seq.*), namely, that the City failed to zone sufficient property to accommodate its regional affordable housing obligations.
- that the City failed to carry out mandatory duties under another General Plan program by failing to amend its Growth Management Ordinance to override the annual housing allocation in order to meet regional housing needs.

On March 12, 2010, Superior Court Judge Roesch issued his decision (a copy of which is attached with the April 6, 2010, agenda report), which may be distilled as follows:

- the Cap conflicts with State law RHNA requirements.
- the City cured any defects in its Growth Management Ordinance by its recent (October 2009) amendment allowing the Council to override the ordinance to satisfy RHNA requirements.
- the City failed to carry out a mandatory duty, under Program 19.1 of the 2003 Housing Element and under the Least Cost Zoning Law, to rezone sufficient properties to high density residential (e.g., 30 units/acre) in order to accommodate the remaining housing units required for the Third Planning Period. Although in October 2009, the City Council rezoned properties in the Hacienda Business Park to meet this obligation, the Court agreed with Urban Habitat that this rezoning was “illusory,” and did not satisfy Program 19.1 or State law because it did not actually allow development to occur until after completion of the Hacienda PUD amendment process that is anticipated to last at least one year.

The Court’s order invalidates the Cap in its entirety. It also directs the City to:

- “cease and desist” from enforcing, administering and/or implementing the Cap.
- remove references to the Cap from its General Plan.
- affect sufficient, “non-illusory” rezonings to accommodate the “unmet” RHNA for the Third Planning Period.
- cease issuing any non-residential building and all related permits for construction or development until it brings its General Plan into compliance.

Depending on the final outcome of the litigation, or any negotiated settlement with the plaintiffs, the litigation will most likely lead to changes in the City's housing cap, recent Hacienda Business Park rezonings and the development approval process for those sites, the upcoming General Plan Housing Element process and the City's growth management policies. As a result, it is helpful for the public and City Council to have an understanding of the State Housing Law and the constraints and obligations it confers on the City when evaluating the options available to City Council at this stage in the litigation. The sections that follow, therefore, provide background regarding the housing cap, as well as an overview of the Regional Housing Needs Assessment (RHNA) and State Housing Law, and the City's growth management program. Following this background is a discussion of the litigation and the recent Court order, and the report concludes with an outline of the options available to the City, including opportunities for alternative growth management strategies.

BACKGROUND

1996 Housing Cap

The November 5, 1996 General Election ballot included two City Council sponsored initiatives: one regarding the Urban Growth Boundary, and the other a Residential Buildout Initiative which provided that the maximum number of residential units at buildout shall not exceed 29,000 units and cannot be changed except by a vote of the people. (Resolution 96-89 is shown in Attachment 2). According to the Initiative Ordinance for the residential cap, the purpose of the measure was to:

- A. Achieve and maintain within the City of Pleasanton a complete, well-rounded community of desirable neighborhoods, a strong employment base and a variety of community facilities.
- B. Develop the City of Pleasanton in an efficient, logical and orderly fashion.
- C. Reaffirm and readopt General Plan programs and policies establishing Pleasanton's maximum number of residential units.
- D. Provide a method for residents to participate in the review and amendments to the City's General Plan by requiring any change to the maximum number of residential units to be approved by a vote of the people.

The 29,000 unit cap was based on the residential holding capacity of the 1996 General Plan. That buildout number was calculated by assuming General Plan policies and assuming that all remaining residentially-designated land on the General Plan map is developed at mid-point density or is developed consistent with an adopted Specific Plan where applicable.

The 1996 General Plan was originally adopted on August 6, 1996. Language in the Land Use Element (Policy 15 and Programs 15.1 and 15.2) was then amended by the initiative that was passed on November 5, 1996.

2005 – 2025 General Plan: The Pleasanton General Plan adopted in July 2009 included the residential cap language from the 1996 General Plan (now Policy 24, Program 24.1 and Program 24.2), as it was amended by *Measures PP* and *QQ* in November 2008. These measures reaffirmed specific policies in the General Plan regarding hillside

development, as well as providing definitions of a housing unit¹. Policy 24 in the General Plan is shown as amended by *Measure QQ*. (Change is shown *italics*).

Policy 24: Maintain a maximum housing buildout of 29,000 housing units, within the Planning Area. *Each single-family residential unit and each multi-family residential unit (for example, a condominium, townhouse, each half of a duplex, a mobile home, or an apartment unit), whether market rate or affordable, shall count towards the maximum housing buildout. Units within assisted living facilities are generally not counted towards the maximum housing buildout due to their commercial nature, but a proportion of such developments may be counted towards the maximum housing buildout based on impacts on community services and infrastructure. Second units and extended stay hotel rooms shall not be counted against the maximum housing buildout.*

The General Plan also includes nine other references to the housing cap in the General Plan, including in the Introduction, Land Use Element and Air Quality and Climate Change Element. A list of the references is included as Attachment 3. In regards to the units remaining under the Housing Cap, as of January 1, 2010, there are approximately 25,964 residential units² in the Pleasanton Planning Area, 44 units under construction, and 653 units with planning approval but not yet under construction. Subtracting the rezonings recently completed in Hacienda leaves 1,469 units.

To staff's knowledge, Pleasanton's "hard" housing cap may be a one of a kind policy in the State and the only one that would prevent a City from planning for its RHNA allocation as discussed below. However, other communities have established housing caps that adjust to meet RHNA obligations and as such, a modified housing cap that adjusted to reflect changes in future RHNA allocations as discussed below, may be allowable. Staff anticipates that this matter would be discussed during the Housing Element process.

Regional Housing Needs Assessment

Another concept that is central to this litigation and the options available to the City, is an understanding of the City's obligation to plan to accommodate its share of the Regional Housing Needs Assessment which is set forth in State Housing Element Law and implemented locally by the Association of Bay Area Governments (ABAG) in cooperation with cities and counties in the ABAG region that includes Alameda, Contra Costa, Marin, Napa, San Francisco, Santa Clara, Solano and Sonoma counties. Generally, the RHNA process involves the California Department of Housing and Community Development working in concert with the California Department of Finance to identify the number of housing units that they determine are necessary to meet the State's housing need for all

¹ *Measure PP* also included additional restrictions regarding hillside and ridgeline development. The Court's ruling focused on the City's housing cap. The ruling also directed the City to cease enforcement only "...of those provisions of Measures...PP, and QQ, which limit the number of housing units permitted in Pleasanton..." Provisions of Measures PP and QQ related to restrictions on development on hillsides and near ridgelines are not considered to be effected by the ruling and will continue to applied to property and proposals subject to these restrictions.

² Excluding second-family units and assisted living units.

income categories over a seven year period. Once the number of housing units is identified, the number is divided between the State's 31 Council of Governments (COGs) (which in our case is ABAG) that have the responsibility to work cooperatively with cities and counties within their region to allocate the units to each individual agency. Based on State law, the RHNA process has four objectives:

- 1) Increase the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner, which shall result in each jurisdiction receiving an allocation of units for low and very low income households.
- 2) Promote infill development and socioeconomic equity, the protection of environmental and agricultural resources, and the encouragement of efficient development patterns.
- 3) Promote an improved intraregional relationship between jobs and housing.
- 4) Allocate a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category, as compared to the countywide distribution of households in that category from the most recent decennial United States census.

To develop the formula for allocating housing units throughout the ABAG region for the 2007 – 2014 RHNA (the 4th RHNA period) ABAG established a Housing Methodology Committee (HMC) comprised of elected officials and staff members from cities in the region. As an outcome of this process, the HMC developed an allocation methodology that incorporates the following factors with the following weight of each factor:

- Household growth (45%)
- Existing employment (22.5%)
- Employment growth (22.5%)
- Household growth near existing and planned transit (5%)
- Employment growth near existing and planned transit (5%)

As mentioned above, the RHNA methodology specifies that these allocations must be divided into specific household income categories including:

- Very Low Income – defined as households with income up to 50% of the Area Median Income (AMI) which is currently \$44,650 for a family of four;
- Low Income – defined as households with income between 50% AMI and 80% of the AMI which is currently at \$71,450 for a family of four
- Moderate Income- defined as households with income between 80% AMI and 120% of the AMI which is currently at \$107,150 for a family of four
- Above- Moderate – which is defined as households with income above 120% AMI

Based on these criteria, the housing units assigned for Pleasanton during this RHNA period are as follows:

2007-2014 REGIONAL HOUSING NEEDS ALLOCATION FOR PLEASANTON

Household Income Categories	RHNA ALLOCATIONS		
	Pleasanton	Alameda Co.	ABAG Region
Very Low Income (50% AMI)	1,076	10,017	48,840
Low Income (80% AMI)	728	7,616	35,102
Moderate Income (120% AMI)	720	9,078	41,316
Above Moderate Income	753	18,226	89,242
TOTAL	3,277	44,937*	214,500

* Detail of allocation in Alameda County is included as Attachment 4.

One point to bear in mind regarding the City's RHNA allocation is that the City is required to plan for this number of units, that is, to have residential zoning that will accommodate it, but is under no obligation to commit public resources or to actually build that number of residential units. Another point is that, in accordance with the State Housing Element Law, any ordinance, policy, voter approved measure, or standard of a city or county that directly limits the number of residential building permits issued by a city or county shall not be a justification for a determination or a reduction in the share of a city or county regional housing need. In addition, Housing Element Law states that adjustments can be made for lack of sewer and water service due to federal or state laws, regulatory actions or supply distribution decisions made by a sewer or water provider other than the local jurisdiction that preclude the jurisdiction from providing the necessary infrastructure for additional development during the planning period. As a result, based on the above, the City is required to plan for 3,277 housing units in the income categories noted above during this RHNA period. As mentioned previously, assuming the zoning for these units, the City's housing cap situation would be as follows:

2007-2014 RHNA IMPACT ON CITY'S HOUSING CAP

Pleasanton Housing Cap	29,000
Existing Housing Units	25,964
Housing Units Under Construction	44
Planning Approval but not yet constructed	653
Hacienda Business Park Rezonings	870
Total Constructed and Planned Units	27,531
Difference between total constructed and planned units and 29,000	1,469
2007-2014 RHNA Requirement	3,277
Total Units with 2007 - 2014 RHNA	30,808
Units Over the Cap with 2001-2014 RHNA	1,808

As a point of comparison, Pleasanton's housing units for the last RHNA period were as follows:

1999 -2007 REGIONAL HOUSING NEEDS ALLOCATION FOR PLEASANTON

Household Income Categories	RHNA ALLOCATIONS		
	Pleasanton	Alameda Co.	ABAG Region
Very Low Income (50% AMI)	729	9,910	47,265
Low Income (80% AMI)	455	5,138	25,095
Moderate Income (120% AMI)	1,239	12,476	60,839
Above Moderate Income	2,636	19,269	97,544
TOTAL	5,059	46,793	230,743

CITY HOUSING ELEMENT

State Planning and Zoning law requires each city and county government to regularly update its General Plan Housing Element. (A brief summary of Housing Element law is included as Attachment 5.)The State also mandates that each Housing Element address its share of the regional housing need (RHNA) as outlined above. The due date for cities to submit their Housing Elements for the 2007-2014 RHNA period was June 30, 2009. Due to the complexities of this litigation, the City has not yet submitted its Housing Element for this period.

As required by State Housing Law (Article 10.6 Housing Elements), the Housing Element adopted by the City of Pleasanton in April 2003 included an inventory of residentially designated land (lists and maps) and a summary table (Table IV-19A) comparing total built, approved and potential units with the above regional housing need. It showed that current zoning could not accommodate 871 of the total 5,059 units required by the 1999-2007 RHNA. To address this issue, our Housing Element included a Program 19.1 which states:

Within one year of adoption of the Housing Element, complete land use studies to identify for conversion as many of the sites identified in Table IV-6 from non-residential to high density residential use as are necessary at appropriate densities (for example, approximately 30 acres at 30 units per acre or 40 acres at 20 units per acre) to meet the City's regional housing needs goal. Follow through with an appropriate modification to the Land Use Element and rezonings as soon as possible, but not later than 2004, so that implementation can occur within the planning period.

It should be noted that the City's original Housing Element language did not include the one year time line because staff and the City Council were concerned that the rezonings could not be completed until an update to the General Plan was completed. However, the Department of Housing and Community Development rejected this concern and required inclusion of the one year time line.

For various reasons, including work on updating the City General Plan, the rezonings were not completed within the year specified. However in October 2008, the City Council approved a General Plan amendment and a Planned Unit Development for 350 high

density (approximately 50 units per acre) apartments adjacent to Stoneridge Mall Road and the new BART station (Windstar development). Further, in October 2009, the City Council rezoned three parcels in Hacienda Business Park for Mixed Use with a minimum density of 30 units per acre. In the City's opinion, this rezoning provided for the remaining 521 units (the original requirement for 871 units, minus the 350 unit Windstar project) with some units remaining to apply to the next RHNA period.

Notwithstanding these rezonings, which the City maintained addressed its obligation under Program 19.1, the Court determined that the rezonings were "illusory" and did not satisfy Program 19.1 or State law because they did not actually allow development to occur until after completion of a City Council established Hacienda PUD amendment process, that includes involvement of a 21-member Hacienda Task Force, which will take one year to complete.

Regardless of the outcome of the current litigation, the City is still obligated to prepare a new Housing Element reflecting the new RHNA units. With the completion of the General Plan, staff intends to commence work on the project as soon as possible and anticipates a public process that will be complete within one year. The City will use the Housing Element planning process to discuss potential sites for higher density housing which will be required to meet the RHNA needs and to discuss changes to the City growth management program to address changes or elimination of the housing cap.

Growth Management Program:

In addition to the residential cap, as discussed above, the City has used several other tools to ensure the orderly growth and development of the City, including the implementation of a Growth Management Program. The Court recognized that the recent amendment of the Growth Management Ordinance removed any constraint to accommodating the City's share of regional housing need, and therefore, the use of this tool should not be impacted by the recent Court order, and may remain in effect.

The City adopted its first growth management ordinance in 1978, designed to regulate the location and rate of new residential growth in a period of sewage treatment constraints and air quality concerns. The growth management program was modified following the comprehensive revisions to the General Plan in 1986 and 1996, and was modified again in October 2009 to allow the City Council to override the annual housing allocation in order to meet the City's RHNA.

Currently, the Growth Management Ordinance:

- Establishes an annual limit for new residential units (with the exception described to accommodate our RHNA obligation);
- Requires the apportionment of new residential units to categories of projects (i.e. affordable projects; major projects; first-come, first-served projects); and,
- Describes a process for obtaining an allocation under the program.

In recent years, as fewer large residential development sites are available, and the number of residential units seeking building permits became significantly lower than the

annual allocation, the growth management ordinance has not come into play. However, in light of the elimination of the housing cap and State legislation related to meeting RHNA targets, the City Council could reinstitute existing practices such as the requirement for formal growth management approval of projects, a requirement that has been dropped in recent years because the number of units applying for approval was well below the allocation threshold. The City Council could also call upon the re-establishment of the Council's Growth Management Committee to review projects on an annual basis. (As with the requirement for formal growth management approval, the Committee has not needed to convene in recent years because of the small number of residential projects being approved.)

In addition to amending current practices, the Council could utilize the Housing Element process to amend the ordinance to specifically reference City-wide standards for services and infrastructure such as intersection level of service, sewer capacity and water supply, and acres of parkland per 1,000 population. (The ordinance currently provides for the City Council to use the information related to services and infrastructure included in the periodic Growth Management Report to evaluate the capacity to serve additional growth.)

Another approach would be to develop a growth management program that would align future growth with the major themes of the General Plan. For example, since sustainability is a current priority for the City, measures could be developed that would score projects based on energy and water use, potential vehicle miles traveled, Green Building score, or estimated greenhouse gas emissions, and so on, and could require development to attain a minimum score to advance in the development process. Other growth management measures could include:

- Pace the annual growth rate to ensure an annual average to a specific percentage of the population (e.g. 1%, 2%, etc.);
- Protection of natural amenities and environmental qualities of the community;
- Growth compatible with the City's capability to provide services related to schools, sewer and water services and recreational facilities;
- Development and Design standards related to physical, visual and fiscal policies;
- Assure development stays within the City's Urban Growth boundary;
- Maintenance of a jobs housing balance.

DISCUSSION OF THE OPTIONS TO ADDRESS LITIGATION

While there are many potential options and outcomes related to the litigation, staff and the City Council have identified three that are most plausible. A summary of these is as follows.

Option 1- *Continue to litigate in an attempt to have the Superior Court modify its order, and/ or to have a higher court overrule the lower court's ruling.*

With this option the City Council would direct staff and legal counsel to continue to litigate in an attempt to modify and or overturn the Court's ruling. It is anticipated that this course of action could take years to resolve, depending upon what particular steps the City pursues.

Advantages:

- Were the City to prevail, the housing cap and rezonings could be retained.
- If litigation prevailed, the housing cap could be retained in its current or amended capacity

Disadvantages:

- The overall ability to appeal or to continue litigation is limited due to the complexities of the case.
- Additional litigation will be expensive, particularly if the plaintiffs prevail and are awarded legal fees.
- There is no assurance the City will prevail in court.
- City permitting authority for non-residential projects could be withheld until resolution of the litigation.
- A resolution of this matter could take years

Option 2- *Comply with the Court's order*

With this option, there are a number of potential impacts depending on how compliance is defined. As an example, due to the complexity of the Court's order, the City and the plaintiffs may have divergent opinions related to interpreting the Court's ruling. As a result, while additional litigation would not be the goal of this option, it is possible. The City Council would consult with staff and legal counsel to identify the actions required to comply, which can encompass a narrow or broad interpretation. At a minimum, these would include some changes to the Hacienda rezonings and entitlement processes, elimination of the Housing Cap in its current form, and changes to the City's growth management program.

Advantages:

- Potentially resolves litigation, particularly if a broad interpretation of compliance is approved by the Council.
- Minimizes additional legal expenses.
- Could allow the City to regain its permitting authority.
- Would facilitate the preparation of the City Housing Element.

Disadvantages:

- Were the City Council to comply narrowly with the Court's order, it may result in additional litigation.
- If further litigation were to result, the City's permitting authority for non-residential projects could remain enjoined by the Court.
- The City would be required to eliminate the Housing Cap and lose some flexibility related to the Hacienda developments.

Option 3 – *Negotiate a settlement with the petitioner and intervener in an attempt to resolve all legal issues.*

The City Council has been engaging in discussion with the petitioner and intervener in an attempt to craft a global settlement that resolves all matters, including the potential payment of the other side's legal fees.

Advantages:

- The only alternative that assures the end of this litigation with petitioner and intervener.
- Recognizes the interests of both parties and sets parameters for moving forward.
- Perhaps the fastest alternative to return permitting authority to the City.

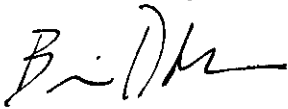
Disadvantages:

- Require areas of compliance that may be overturned in future litigation
- Will result in the elimination of the housing cap and changes to the Hacienda development review and approval process.
- May require an accelerated schedule for matters related to amending the General Plan to eliminate the housing cap and preparation of the Housing Element.

Summary

The City Council is considering at a second public meeting this matter to both educate the public and to get its input regarding available options. Following this meeting, the City Council intends to provide direction to staff and legal counsel regarding a preferred course of action. Due to the timetable established by the Court, it is anticipated that this direction will occur within 7 to 14 days of this meeting. The Council will continue to keep the community informed as this matter progresses.

Submitted by:



Brian Dolan
Director of Community Development

Approved by:



Nelson Fialho
City Manager

Attachments

1. April 6, 2010 City Council agenda report and attached Court Order
2. Resolution 96-89 Authorizing the Placement on the November 5, 1996 Regular Election of City Sponsored Initiatives.
3. References to the Housing Cap in the 2005 – 2025 General Plan
4. Alameda County RHNA allocation
5. California Department of Housing and Community Development Housing Element law summary

**CITY COUNCIL AGENDA REPORT****15**April 6, 2010
City Attorney**TITLE: PRESENTATION REGARDING EFFECT OF JUDGE'S ORDER IN *URBAN HABITAT V. CITY OF PLEASANTON* LITIGATION****SUMMARY**

The Alameda County Court has issued its ruling in the above-referenced case challenging the City's Housing Cap (Cap), Growth Management Ordinance and implementation of the 2003 Housing Element. The ruling has invalidated the City's Cap in its entirety, required substantial and substantive revision to the City's General Plan to remove the Cap, ordered the City to rezone properties (at the City's Hacienda Business Park or elsewhere) in compliance with Program 19.1 of the 2003 Housing Element, and broadly suspended the City's non-residential permit authority pending compliance with the ruling. The City Council has been discussing with legal counsel in closed session the effect of this decision and what possible responses are available to the City. The purpose of this item on your meeting agenda is to share this information with the citizens of Pleasanton.

RECOMMENDATION

Hear presentation from City's outside special counsel, Thomas B. Brown of Hanson Bridgett LLP. Listen to comments from interested members of the public. Decide whether or not to hold an additional meeting on this subject to allow for further public input; the April 20, 2010 regular City Council meeting has tentatively been set aside for this purpose.

FINANCIAL STATEMENT

The City's legal expenses litigating this case since its inception in the fall of 2006 are approximately \$500,000. (This reflects only the City's legal expenses paid to its own outside legal counsel. It does not reflect work performed by the City Attorney's Office, nor any staff time or resources expended in providing a defense to the City.) Depending on the City's response to the Superior Court's ruling, potential future legal expenses are conservatively estimated to be \$250,000.

Although such claims could be disputed factually and legally, the City may also face claims for the Petitioners' and Intervener's legal expenses, which likely will be considerably higher than the City's own legal fees, as two parties are involved. Similarly, their future legal costs will be more, and the City could find itself liable for payment of those, as well.

BACKGROUND

In November 2006, Urban Habitat filed litigation against the City claiming that various City policies and ordinances prevent or hinder the development of affordable housing in Pleasanton during what is known under the State Housing Element Law (Government Code section 65583 *et seq.*) as the "Third Planning Period" ending in 2009. The lawsuit alleged (among other claims):

- that the City's Housing Cap violates state law in a number of respects, including that the Cap prevented the City from accommodating its regional "fair share" housing numbers ("RHNA"), and sought to have the Cap declared invalid.
- that the City failed to carry out mandatory duties under Program 19.1 of the 2003 Housing Element, and under the so-called Least Cost Zoning Law (Government Code section 65913.1 *et seq.*), namely, that the City failed to zone sufficient property to accommodate its regional affordable housing obligations.
- that the City failed to carry out mandatory duties under another General Plan program by failing to amend its Growth Management Ordinance to override the annual housing allocation in order to meet regional housing needs.

In 2007, the City succeeded in having the lawsuit dismissed at the trial court level on procedural grounds. Urban Habitat appealed that decision, however, and the Court of Appeal reinstated most of the litigation, including that portion that challenges the validity of the Housing Cap. The City thereafter sought review of the Court of Appeal decision by the California Supreme Court; that Court, however, denied the City's petition.

While the case was on appeal, the City was assigned its RHNA numbers for the next (Fourth) Planning Period by ABAG, covering 2007-2014. Thus, following remand to the trial court, Urban Habitat amended its lawsuit to assert claims that the City's Cap prevented the City from accommodating its new RHNA numbers.

At that time as well, the California Attorney General contacted the City to indicate the State's interest in joining Urban Habitat's case against the City. The Superior Court granted the Attorney General's application to intervene in the case in early 2009.¹

The City's efforts to dismiss the case prior to trial, based on a variety of substantive and procedural arguments, were unsuccessful. Accordingly, the case was briefed and argued before Judge Roesch of the Alameda County Superior Court on December 18, 2009.

¹ In 2009 as well, the Attorney General also filed a separate lawsuit challenging the City's decision approving its General Plan update, and certifying the attendant environmental impact report (EIR), based (among other claims) on the continued existence and enforcement of the Cap.

DISCUSSION

The Court's Order

On March 12, 2010, Judge Roesch issued his decision (a copy of which is attached), which may be distilled as follows:

- the Cap conflicts with State law RHNA requirements.
- the City cured any defects in its Growth Management Ordinance by its recent (October 2009) amendment allowing the Council to override the ordinance to satisfy RHNA requirements.
- the City failed to carry out a mandatory duty, under Program 19.1 of the 2003 Housing Element and under the Least Cost Zoning Law, to rezone sufficient properties to high density residential (e.g., 30 units/acre) in order to accommodate the remaining housing units required for the Third Planning Period. Although in October 2009, the City Council rezoned properties in the Hacienda Business Park to meet this obligation, the Court agreed with Urban Habitat that this rezoning was "illusory," and did not satisfy Program 19.1 or State law because it did not actually allow development to occur until after completion of the Hacienda PUD amendment process that is anticipated to last at least one year.

The Court's order invalidates the Cap in its entirety. It also directs the City to:

- "cease and desist" from enforcing, administering and/or implementing the Cap.
- remove references to the Cap from its General Plan.
- affect sufficient, "non-illusory" rezonings to accommodate the "unmet" RHNA (521 units) for the Third Planning Period.
- cease issuing any non-residential building and all related permits for construction or development until it brings its General Plan into compliance.

Actions the Order Directs the City to Take

Once the Court's decision is final, it will require the City to take certain actions to comply, and prevents the City from certain other actions, as follows:

1. Cease and desist from enforcing/implementing Cap; remove Cap references from the General Plan.

While to date the City has never actually "enforced" the Cap, insofar as the City currently has nearly 3,000 units remaining before the Cap is exhausted, Urban Habitat and the Attorney General produced evidence from developers that they have found the Cap to present a disincentive to proposing and applying for residential development projects. Urban Habitat and the Attorney General have also argued that the Cap will preclude the City from accommodating its RHNA in its updated Housing Element for the next (Fourth) Planning Period. Specifically, their argument has been that even if the

City could zone property (at Hacienda or elsewhere) to satisfy its RHNA for the Third Planning Period without violating the Cap, the City cannot do so for the current, Fourth Planning Period since the remaining units under the Cap are just under 3,000 and the City's current RHNA exceeds 3,200.

Thus, fairly interpreted, the ruling prevents the City from using the Cap in any planning documents or decisions. It also requires the City to actually amend Policy 24 and Programs 24.1, 24.2 and 24.3 of the current General Plan to remove the Cap's provisions altogether.

To effectuate this, the City will be required, within 120 days of the date the Court signs its formal writ memorializing its March 12 Order, to amend Policy 24 and Programs 24.1, 24.2 and 24.3 of the current General Plan to remove references to the Cap altogether. Alternatively, although the Court's Order does not explicitly allow this approach, the City could petition the Court to allow it to replace those references with references to a revised Cap that includes an exception allowing the City to accommodate its State RHNA obligations.

Pursuant to Government Code section 65759, making such changes to the City's General Plan are exempt from CEQA. However, section 65759 requires a streamlined environmental review process that must occur strictly within the 120 day compliance period.

The ruling does not require the City to immediately undertake to prepare or adopt its updated Housing Element for the Fourth Planning Period covering 2007-2014.

2. Rezoning to accommodate the City's "unmet" 1999-2007 RHNA.

In Program 19.1 of the 2003 Housing Element, the City stated its intention, initially by June 2004, to rezone sufficient properties to high density residential (e.g., 30 units/acre) in order to accommodate the remaining (now 521) housing units required for the Third Planning Period (1999-2007). For a number of reasons, the City did not do so until October 2009, at which time it undertook to rezone three parcels at Hacienda. Again, the Court's March 12 ruling found that that rezoning did not satisfy either Program 19.1 or the Least Cost Zoning Law. The basis for this ruling was Section 5 of the rezoning ordinance (No. 1998), which precluded development under the Hacienda rezoning until after the completion of the amendment of the Hacienda PUD process, which was anticipated to last for at least one year.²

² The Court found (at page 8) the "good cause" provision of Ordinance 1998 to be "illusory," and an "obvious disincentive to developers."

To satisfy the Court's ruling, the City may follow one of two courses. First, it may amend the October 2009 rezoning ordinance (No. 1998) to remove Section 5 so as to allow immediate development at the higher densities, rather than precluding it from occurring until after completion of the PUD amendment process. Alternatively, provided it does so in a manner that does not create any new barrier or disincentive to development, the City may opt to rezone sufficient properties elsewhere in the City to satisfy the unmet 1999-2007 RHNA.

The Court's ruling with respect to the rezonings creates an additional requirement. Specifically, the Court states that "the zoning and land-use changes need to be implemented such that they are without condition or need of future discretionary approval." Urban Habitat has advised the City that it interprets this requirement to mean that development following the rezonings would be "by right," meaning without discretionary review by the City other than design review. The City disagrees, and believes that the rezonings required by Program 19.1 were never intended to eliminate any need for future discretion by the City, and thus that the Court's ruling should be construed such that the rezonings would simply eliminate the need for amendment of the Hacienda PUD process. This aspect of the order appears to require further clarification, and will require litigation if the City pursues that course.

3. Cease issuing any non-residential building and all related permits.


Government Code section 65755 allows the Court to suspend the City's non-residential permitting authority pending actions by the City to bring a non-compliant General Plan into compliance with State law. At Urban Habitat's request, Judge Roesch exercised that discretion against the City. Pending the actions outlined above, the City will be precluded from approving any non-residential building permits.

Next Steps

The City Council continues to confer with legal counsel in closed session. The City's legal counsel and a subcommittee of the City Council, consisting of Mayor Hosterman and Council member Cindy McGovern, have met with the petitioners and intervener regarding potential resolution of this matter. The options available to the Council will be discussed in greater detail on April 20, but consist, essentially, of: comply with the Court's ruling, as narrowly as permitted by law, continue to litigate, or negotiate a resolution.

We have discussed the City's compliance options above. If the City chooses to continue to litigate, it will be required to address the fact that Urban Habitat has two claims outstanding against the City that have not been tried or resolved, and that the Court's March 12 ruling does not address. These are discrimination/fair housing claims under the Fair Employment and Housing Law (FEHA), and the anti-discrimination statute (Government Code section 65008) within the State Planning Law. Urban Habitat may assert that the City cannot ask the Court of Appeal to review the March 12 ruling until those two outstanding claims are resolved. Assuming the correctness of that assertion, the City may be in a position of being required to comply with the Court's interim (March 12) ruling for many months, if not a year or more, while Urban Habitat prosecutes its remaining claims.

Submitted by:



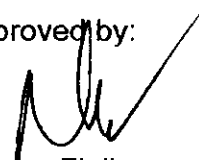
Jonathan P. Lowell
City Attorney

Fiscal Review



David Culver
Finance Director

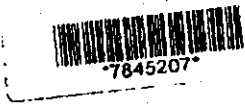
Approved by:



Nelson Fialho
City Manager

Attachments:

1. Court Decision of March 12, 2010



FILED
ALAMEDA COUNTY

MAR 12 2010

CLERK OF THE SUPERIOR COURT

By Vicki Daybell

VP

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

URBAN HABITAT PROGRAM AND
SANDRA DE GREGORIO,

Petitioners & Plaintiffs,

PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. EDMUND G.
BROWN, JR., ATTORNEY GENERAL,
et al.,

Plaintiff-Intervenor,

v.

CITY OF PLEASANTON, A
MUNICIPAL CORPORATION AND
THE CITY COUNCIL OF
PLEASANTON

Respondents & Defendants.

Case no. RG06-293831

ORDER GRANTING PETITION FOR
WRIT OF MANDATE

The hearing on the First Amended Verified Petition of Petitioners and
Plaintiffs Urban Habitat Program and Sandra De Gregorio (collectively,

“Petitioners”) for Writ of Mandate came regularly before the court on December 18, 2009, Judge Frank Roesch presiding.

Appearing for the Petitioners were Richard Marcantonio, Esq. of Public Advocates, Inc., Michael Rawson, Esq. of California Affordable Housing Project, and Christopher Moody, Esq. of Paul, Hastings, Janofsky & Walker LLP.

Appearing for the Respondents were Thomas Brown, Esq. and Adam Hofmann, Esq. of Hansen Bridgett LLC and Michael Roush, Esq., Interim City Attorney.

Appearing for Intervenor was Clifford Rechtschaffen, Esq. of the Office of the Attorney General.

The matter was argued and submitted.

The court has carefully considered the papers and pleadings filed herein and has considered the argument of counsel. Good cause appearing therefore, the court HEREBY GRANTS the Petition for Writ of Mandate. The reasoning follows.

BACKGROUND

This lawsuit concerns allegations relating to Respondent's city planning process, and the adequacy or inadequacy of its planning documents.

Policy 15 of the Land Use Element of the City's 1996 General Plan and Policies 24 et seq. of the Land Use Element of the City's 2005 general plan codify measure GG, a housing cap. Measure GG was an initiative measure passed by the voters in 1996. It (and the Land Use Element's policy codifications) restrict and

place limits on the Pleasanton City Council and City government, prohibiting them from permitting the construction of more than 29,000 housing units from 1996 until the end of time. The only exception permitted by the Measure is that it may be amended, but only by a vote of the people.¹ It is the continuing validity of this housing cap that is one of the subjects of this action.

Pleasanton Municipal Code Chapter 17.36, entitled Growth Management Program, includes section 17.36.060, which places annual limits on building permits for the construction of new housing units. This provision of the Pleasanton Municipal Code was modified about a month and a half before the hearing of the present Petition to allow an exception to the maximum number of building permits rule allowing an increase to the maximum amount, but only if the City is obligated to do so in order to meet its Regional Housing Needs Allocation ("RHNA").

In 2003 the City of Pleasanton adopted its current Housing Element of the General Plan. Within that plan was an acknowledgment that "the amount of units projected from [all of] the City's residentially owned land would be short of the number required require to meet the city's aggregate share of regional needs...." (Housing Element, p. 35.) Also in that Housing Element is a plan to study (within

¹ The measure was amended by Measures PP and QQ in 2008 by public vote. Those measures reaffirmed the 29,000 units housing cap, reaffirmed that the City Council had no discretion to allow any waiver to the housing cap, and excluded in-law units and extended-stay motel rooms from the housing cap.

one year of 2003) which other vacant land in this City ought be rezoned to "residential" to accomplish the City's obligation to accommodate its RHNA.

The City did not conduct its study within that year and has not yet completed a complete land-use change/zoning change necessary for it to accommodate the shortfall of RHNA existing in 2003.

The City Council did, a month and a half before the hearing on the present Petition, pass Pleasanton Ordinance 1998 approving the rezoning of a portion of the land located in the "Hacienda Business Park." However, a careful reading of the ordinance discloses that the status quo was not changed. The ordinance requires that the approval of any development plan for residential development "shall not be granted until the completion of a PUD Major Modification for the entire Hacienda Business Park." This is a process that could take up a period of time ranging from one year to forever.

Local governments such as the City of Pleasanton are delegated the authority over land-use decisions and planning within their borders, and "have a responsibility to use the powers vested in them to facilitate" new housing construction that "make(s) adequate provision for the housing needs of all economic segments of the community." (Govt. Code § 65580, subd. (d).) The scope of that responsibility is spelled out in detail in the Housing Element Law. (Govt. Code §§ 65580-65589.8.) It was the intent of the Legislature by the enactment of the Housing Element Law to assure that counties and cities recognize

their responsibilities in contributing to the attainment of the state housing goal, and to assure that counties and cities will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal. (Govt. Code § 65581.)

In order to attain state housing goals, the Legislature prescribed that cities, including Pleasanton, maintain an inventory of land available for residential development (see Govt. Code § 65583.2), and that cities must make available for residential development sufficient suitable land to accommodate its share of regional housing needs. (See, e.g., Govt. Code § 65584.) Existing and projected regional housing needs are determined in the manner detailed in Government Code sections 65584.01 and 65584.02, and those regional needs are allocated within the various regions of the State by the council of local governments in each respective region. (See Govt. Code §§ 65584.04, 65584.05 and 65584.06.) Here that council of governments is the Association of Bay Area Governments (ABAG).

A city's obligations under the Housing Element Law require it to implement programs to zone or rezone land to establish adequate sites to accommodate its Regional Housing Needs Allocation (RHNA) and must timely adopt a housing element with an inventory of sites which can accommodate a city's share of the regional housing need. (See, e.g., Govt. Code §§ 65583, 65584.09, and 65588.)

The RHNA allocated by ABAG to the City of Pleasanton in 2001 relating to the 1999-2007 planning period is 5,059 units of housing. The RHNA allocated by

ABAG to the city of Pleasanton in 2007 relating to the 2007-2014 planning period is an additional 3277 housing units.

THE HOUSING CAP

There is a difference of opinion regarding the number of housing units built since the imposition of the housing cap, but the difference is not material. The parties do not disagree that the number of units allowable under the Measure GG housing cap is less than the City's RHNA obligation.

It is self-evident that the City cannot comply with the State statute requiring the City to accommodate its RHNA when the city is not permitted by its local law, Measure GG, to allow the number of housing units to be built that would satisfy the RHNA.

The question of which law prevails is elementary. State law preempts whenever local laws contradict state law. (See Cal. Const. article XI, § 7.)

The Supreme Court has stated it succinctly :

"The general principles governing state statutory preemption of local land use regulation are well settled." "The Legislature has specified certain minimum standards for local zoning regulations (Govt. Code §65850 et seq.)" even though it also "has carefully expressed its intent to retain the maximum degree of local control (see, e.g., id., §§ 65800, 65802)." (*IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 89.) "A county or city may make and enforce within its limits all local police, sanitary, and other ordinances and regulations *not in conflict with general laws.*" (Cal. Const., art. XI, § 7, italics added.) "Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates [citations], contradicts [citation], or enters in an area fully occupied by general law, either expressly or by legislative implication [citations]. (*People ex rel. Deukmejian v. County of Mendocino* (1986) 36 Cal.3d 476,

484, quoting *Lancaster v. Municipal Court* (1972) 6 Cal.3d 805, 807-808; accord, *Sherman-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897.)”

Morehart v County of Santa Barbara (1994) 7 Cal.4th 725, 747.

Here Measure GG, with the passage of time and the promulgation of a RHNA obligation that is contradicted by the provisions of Measure GG, has become pre-empted by the Housing Element Law, rendering it void.² (See also *Building Industry Association of San Diego v. City of Oceanside* (1994) 27 Cal.App.4th 744).

THE GROWTH MANAGEMENT PROGRAM

At the eleventh hour, the city has avoided the invalidation of its annual limitation on new housing units, which conflicts with the RHNA, by promulgating an exception to the program. The change cures the facial invalidity of the program and there is no as-applied challenge presented here.

COMPLIANCE WITH THE 1999-2007 RHNA OBLIGATION

The City is in clear violation of the Housing Element Law, the Least Cost Zoning Law, and its obligations to complete its 2003 Housing Element program designed to satisfy its RHNA for the 1999-2007 planning period.

² This lawsuit is about the City’s obligation to plan and to accommodate its RHNA in its plans. It matters not that the City planners have a belief that the State’s RHNA requirements are unlikely to be satisfied because of the current economic climate. First and foremost, the City does not have the discretion to ignore the specific mandates of State law and second, the City planners’ current beliefs are subject to change based on economic events beyond the control of either the City or the State.

The City still has not accommodated the RHNA allocated to it in 2001.

The City's enactment of Ordinance 1998 a month and a half before the hearing on this petition may start a process to cure the City's failure in this matter, but is wholly inadequate to be considered a cure. Its requirement of further necessary acts before any development plan can be approved vitiates any actual remedial effect of the Ordinance. Moreover, the "good cause" exception in the Ordinance is illusory because it is not defined and because it is an obvious disincentive to developers. The requirement that a developer might have to spend a great deal of money just to reach the point where a discretionary determination of whether "good cause" exists to allow a developer to continue with a project will inhibit any developer from proposing any residential development.

For the above stated reasons, the Writ of Mandate is GRANTED.

Respondents City of Pleasanton and City Council of the City of Pleasanton must cease and desist from the enforcement, administration, and/or implementation of the provisions of Measures GG, PP, and QQ, which limit the number of housing units permitted in Pleasanton, and must remove those provisions from all of Pleasanton's planning documents including the General Plan and any element of the General Plan. This includes Policy 24 and Programs 24.1, 24.2, and 24.3 of the Land Use Element of the General Plan.

Respondents must implement non-illusory zoning changes sufficient to accommodate the unmet RHNA for the 1999-2007 Planning Period. That is, the zoning

and land-use changes need be implemented such that they are without condition or need of future discretionary approval.

Respondents must cease issuing non-residential building permits and all related building permits for any construction or development except as provided in Government Code sections 65755, subdivisions (a)(1) and (b) and 65760 until the City brings its General Plan into compliance with the requirements of State Law.

Petitioners are to prepare a form of Writ returnable in 120 days and a form of judgment for the Courts review and consideration and submit them to the court within ten days.

EVIDENTIARY DETERMINATIONS

1. Petitioners' and Intervenor's Objections filed 12/7/09.

STERN DECLARATION

1. overruled – goes to weight and credibility.
2. sustained on all three grounds asserted.
3. sustained on all three grounds asserted.
4. overruled.
5. sustained – relevance.
6. sustained – legal conclusion.
7. sustained – legal conclusion.
8. sustained – speculation.
9. overruled – goes to weight.

10. overruled – goes to weight but is limited to declarant’s expertise as a city planner.

ISERSON DECLARATION

1. sustained – hearsay and relevance.
2. sustained – relevance.
3. overruled – internal inconsistency, or incorrect facts or incomplete facts are not evidentiary objections.
4. overruled – admissible lay opinion.

ERICKSON DECLARATION

1. sustained – relevance.

LIBIKI DECLARATION

1. sustained – relevance.
2. sustained – relevance.

2. Respondents’ Objections dated December 14, 2009

CRESSWELL DECLARATION

1. overruled.
2. sustained – relevance.
3. overruled – the portion of the Creswell Declaration contains admissible evidence of an agency’s interpretation of its duties. The ruling made on May 17, 2007 relates to a different declaration which is not identical to the declaration at issue.

TAEB DECLARATION

4. overruled.
5. overruled.
6. overruled on the grounds asserted.
7. overruled.
8. sustained.
9. overruled.

GHIEMMETTI DECLARATION

10. overruled.
11. overruled.
12. overruled.
13. overruled.
14. overruled.

RICHARD MARCANTONIO DECLARATION

15. overruled.

Objections to Intervenor's Supplemental Request for Judicial Notice.

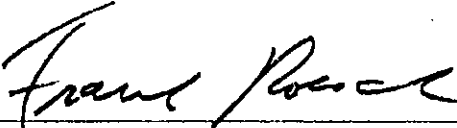
- 16 and 17 – overruled.

3. Respondent's Request for Judicial Notice is granted.
4. Petitioner's Request for Judicial Notice is granted and the objections asserted to it are all overruled.

5. Intervenor's Request for Judicial Notice is granted and the objections asserted to it are all overruled.

6. Intervenor's Supplemental Request for Judicial Notice is granted and the objections asserted to it are overruled.

Dated 3/12/10



Frank Roesch
Judge of the Superior Court

CLERK'S DECLARATION OF MAILING

I certify that I am not a party to this cause and that on the date stated below I caused a true copy of the foregoing ORDER GRANTING PETITION FOR WRIT OF MANDATE to be mailed first class, postage pre paid, in a sealed envelope to the persons hereto, addressed as follows:

Richard A. Marcantonio, Esq.
Public Advocates, Inc.
131 Steuart Street, Suite 300
San Francisco, CA 94105

Michael Rawson, Esq.
The Public Interest Law Project
449 15h Street, Suite 301
Oakland, CA 94612

Michael Roush, Deputy City Attorney
123 Main Street
P.O. Box 520
Pleasanton, CA 94566

Thomas B. Brown, Esq.
Hanson Bridgett Marcus Vlahos & Rudy, LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

Cliff Rechtschaffen, Deputy Attorney General
1515 Clay Street, 20th Floor
Oakland, CA 94612

Megan H. Acevedo
California Department of Justice
1515 Clay Street, 20th Floor
Oakland, CA 94612

I declare under penalty of perjury that the same is true and correct.
Executed on March 15, 2010

By: Vicki Daybell
Vicki Daybell, Deputy Clerk
Department 31

CITY COUNCIL OF THE CITY OF PLEASANTON

ALAMEDA COUNTY, CALIFORNIA

RESOLUTION NO. 96-89

A RESOLUTION AUTHORIZING THE PLACEMENT ON THE NOVEMBER 5, 1996 REGULAR ELECTION OF CITY COUNCIL SPONSORED INITIATIVES PROPOSING AMENDMENTS TO THE PLEASANTON GENERAL PLAN CONCERNING THE URBAN GROWTH BOUNDARY AND THE CITY'S OVERALL HOUSING UNIT CAP, DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE INITIATIVES, AUTHORIZING ARGUMENTS CONCERNING THE INITIATIVE MEASURES, ALLOWING REBUTTAL ARGUMENTS REGARDING THE INITIATIVE MEASURES, AND REQUESTING ALAMEDA COUNTY TO CONDUCT THIS ELECTION IN CONJUNCTION WITH THE NOVEMBER 5, 1996 REGULAR ELECTION

- WHEREAS, on August 6, 1996, the City Council adopted a General Plan Update, revising and amending the City's General Plan in numerous respects; and
- WHEREAS, the City Council adopted as part of the Land Use Element certain policies and programs as to the creation and maintenance of an Urban Growth Boundary beyond which urban development shall not occur; and
- WHEREAS, the City Council also adopted as part of the Land Use Element policies and programs as to the maximum housing units at buildout of the General Plan; and
- WHEREAS, these policies and programs are fundamental to the City's preservation of open space and managing growth in Pleasanton, and the citizens of Pleasanton have expressed a strong interest that changes to these areas of the General Plan should not occur without the citizens' being consulted; and
- WHEREAS, it is the Council's intent that these policies and programs be reaffirmed and readopted by the voters of Pleasanton and that these programs and policies be changed only by the voters of Pleasanton; and
- WHEREAS, Section 9222 of the Elections Code permits the City Council to submit to the voters, without a petition therefor, a proposition for the repeal, amendment or enactment of an ordinance; and

WHEREAS, the City Council has reviewed and considered the Initiative Ordinances attached to this Resolution; and

WHEREAS, Section 9280 of the Elections Code specifies that the City Council may direct the City Clerk to transmit an initiative to the City Attorney to prepare an impartial analysis of the measure; and

WHEREAS, Section 9282 of the Elections Code specifies that the legislative body, or any member or members of the legislative body authorized by that body, may file a written argument for any city measure; and

WHEREAS, Section 9285 of the Elections Code sets forth the procedures for rebuttal arguments.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PLEASANTON RESOLVES AS FOLLOWS:

Section 1: That two City Council sponsored initiatives, one regarding the Urban Growth Boundary and one regarding the maximum number of housing units at buildout, be placed on the November 5, 1996 General Election, and the Initiative Ordinances are attached to this resolution. The measures shall be designated by letter by the Alameda County Registrar.

Section 2: The ballot language shall be as follows:

As to the Urban Growth Boundary Initiative

Shall the Pleasanton Urban Growth Boundary Initiative be adopted to require voter approval of all but minor changes to the City's Urban Growth Boundary?

Yes No

As to the Residential Buildout Initiative

Shall the Pleasanton Residential Buildout Initiative be adopted which provides that the maximum number of residential units at buildout shall not exceed 29,000 units and cannot be changed except by a vote of the people?

Yes No

- Section 3: The City Clerk is directed to transmit the initiatives to the City Attorney to prepare an impartial analysis of the measures.
- Section 4: The City Council authorizes arguments for the initiatives to be filed by Mayor Ben Tarver and Councilmember Becky Dennis. These arguments must be submitted to the City Clerk by 5:00 p.m., on August 15, 1996.
- Section 5: The City Council hereby adopts the procedures set forth in Sections 9285 of the Elections Code regarding submission of rebuttal arguments.
- Section 6: The City Council hereby requests the Alameda County Board of Supervisors to order this election be conducted by Alameda County on November 5, 1996, in conjunction with the General Election being held within the County on that date, with the actual costs for said election to be reimbursed by the City to the County.
- Section 7: This resolution shall become effective immediately upon its passage and adoption.

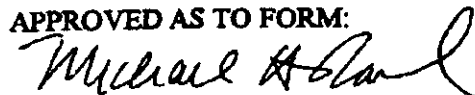
I HEREBY CERTIFY THAT THE FOREGOING WAS DULY AND
REGULARLY ADOPTED BY THE CITY COUNCIL OF THE CITY OF PLEASANTON, AT
A MEETING HELD ON AUGUST 7, 1996 BY THE FOLLOWING VOTE:

AYES: Councilmembers - Dennis, Pico and Mayor Tarver
NOES: Councilmembers - Michelotti and Mohr
ABSENT: None
ABSTAIN: None

ATTEST:


Peggy L. Ezidro, City Clerk

APPROVED AS TO FORM:


Michael H. Roush, City Attorney

THE PLEASANTON URBAN GROWTH BOUNDARY INITIATIVE

The People of the City of Pleasanton do hereby ordain as follows:

Section 1. Declaration of Purpose

The purpose of this measure is to:

- A. Achieve and maintain a complete, well-rounded community of desirable neighborhoods, a strong employment base and a variety of community facilities.
- B. Preserve open space areas for the protection of public health and safety, recreational opportunities, use for agriculture and grazing, the production of natural resources, the preservation of wildlands, and the physical separation of Pleasanton from neighboring communities.
- C. Reaffirm and readopt General Plan programs and policies establishing Pleasanton's Urban Growth Boundary (UGB).
- D. Provide a method for residents to participate in the review and amendments to the City's General Plan by requiring, with certain exceptions, any change in the UGB to be approved by a vote of the people.

Section 2. Findings

- A. The General Plan Map designates an Urban Growth Boundary (UGB) line around the edge of land planned for urban development at General Plan buildout. The line distinguishes areas generally suitable for urban development and the provision of urban public facilities and services from areas generally suitable for the long-term protection of natural resources, large lot agriculture and grazing, parks and recreation, public health and safety, subregionally significant wildlands, buffers between communities, and scenic ridgeline views. The UGB is intended to be permanent and define the line beyond which urban development will not occur.
- B. The UGB line was established in recognition of the location of open space lands protected by a voter approved initiative, jurisdictional boundaries, and physical terrain constraints. The western UGB line is coterminous with the eastern border of the Pleasanton Ridgeland open space area. This 13,000-acre area is protected for parks and recreation, and large-lot agricultural uses, as a result of a voter approved initiative adopted in 1993, and through parallel policies adopted by Alameda County and the City of Hayward. The northernmost UGB is coterminous with the Pleasanton/Dublin city limit line. The eastern UGB extends through the Pleasanton quarry lands. Since the future use of land in this area will

not be determined until after mining activities are completed, the Pleasanton General Plan stipulates that the line be re-evaluated at such time as comprehensive land use changes are considered for the reclaimed lands. The eastern UGB south of the quarry lands is coterminous with the Pleasanton/ Livermore city limit line as it extends through the Ruby Hill development. The UGB to the south is based upon physical terrain as it extends along the base of the steep hills that enclose the Happy Valley area. It is also situated in nearby hilly locations to accommodate future development which has been permitted by the General Plan for many years.

- C. Lower densities should be encouraged along the inside edge of the UGB to provide a transition/buffer for preventing potential conflicts with uses immediately beyond the boundary such as agriculture and wildlands.
- D. In order to implement the UGB, the Land Use Element of the General Plan adopted August 6, 1996 provides Policy 11 and its related programs as follows:
- Policy 11: Maintain a permanent Urban Growth Boundary (UGB) beyond which urban development shall not be permitted.
 - Program 11.1: Permit only non-urban uses beyond the UGB.
 - Program 11.2: Extend Urban Services only to areas within the UGB, with the following possible exceptions for selected Urban Services: (1) areas beyond the UGB where the public health and safety present overriding considerations; (2) as to water service, areas which are within the boundaries of the former Pleasanton County Township Water District and where the service extension is consistent with the 1967 Joint Powers Agreement between the City and the District; and (3) on reclaimed land which is currently designated as Sand and Gravel Harvesting in East Pleasanton when the potential future use is non-urban.
 - Program 11.3: Because the UGB is considered to be permanent, future adjustments to the line's location are discouraged; provided, however, minor adjustments may be granted that meet all the following: (1) are otherwise consistent with the goals and policies of the General Plan; (2) would not have a significant adverse impact on agriculture, wildland areas, or scenic ridgeline views; (3) are contiguous with existing urban development or with property for which all discretionary approvals for urban development have been granted; (4) would not induce further adjustments to the boundary; and (5) demonstrate

that the full range of urban public facilities and services will be adequately provided in an efficient and timely manner.

- Program 11.4: Encourage lower intensity uses immediately inside the UGB, as necessary, to prevent potential land use conflicts with outlying non-urban uses.

E. Pleasanton's UGB reflects a commitment to focus future growth within the City to prevent urban sprawl. The UGB is based on a realistic assessment of Pleasanton's ability to extend City services such as sewer and water and is designed to protect environmentally sensitive areas such as the Ridglands and the Southeast hills. The UGB complements General Plan policies promoting additional housing opportunities, emphasizing infill development, and supporting a thriving employment center. The UGB will:

- Encourage efficient growth patterns and protect the City of Pleasanton's quality of life by concentrating future development largely within existing developed areas;
- Promote uses that foster public health and safety and productive investment for agricultural enterprises on lands outside the boundary;
- Foster and protect the community character of Pleasanton while encouraging appropriate economic development in accordance with the City's unique local conditions;
- Concentrate growth within the boundary in order to limit the extent of required City services and restrain increases in their costs;
- Allow the City to continue to meet the housing needs for all economic segments of the population, especially lower and moderate income households, by directing the development of housing into areas where services and infrastructure can be provided more cost effectively; and
- Promote stability in long-term planning for the City by establishing a cornerstone policy within the General Plan designating the geographic limits of long-term urban development and allowing sufficient flexibility within those limits to respond to the City's changing needs over time.

F. The General Plan has a policy that Pleasanton residents will participate in land-use planning and decision making and that Pleasanton residents will participate in the review and update of the General Plan as conditions change. Consistent with that policy and to ensure that the Urban Growth Boundary remains permanent and not be substantially adjusted without the Pleasanton voters' consent, the voters must approve an amendment to the Pleasanton General Plan as provided in this measure.

Section 3. General Plan Amendments Regarding the Urban Growth Boundary

A. Reaffirmation and Readoption of Urban Growth Boundary

The Pleasanton Urban Growth Boundary Initiative hereby reaffirms and readopts (1) the Urban Growth Boundary designated on the Land Use Designations Map of the City of Pleasanton General Plan adopted August 6, 1996, a reduced copy of which is attached to the initiative for illustrative purposes as Exhibit A, and (2) Land Use Element Policy 11 and its Programs 11.1 through 11.4 of the City of Pleasanton General Plan as set forth in section 2.D of this initiative.

B. Adoption of Urban Growth Boundary Amendment Policy

The following text is added to the Land Use Element of the City of Pleasanton General Plan adopted August 6, 1996 immediately following Program 11.4:

- * Program 11.5: The foregoing Policy 11 and Programs 11.1 through 11.4, this Program 11.5, and the Urban Growth Boundary designated on the Land Use Designations Map of the City of Pleasanton General Plan adopted August 6, 1996 and as readopted by the Pleasanton Urban Growth Boundary Initiative, shall be amended only by a vote of the people.

Section 4. Implementation

- A. Effective Date.** This Initiative shall take effect if a majority of the votes cast on the Initiative are in favor of its adoption. Upon the effective date of this initiative, the provisions of section 3 of the initiative are hereby inserted into the Land Use Element of the City of Pleasanton General Plan as an amendment thereof, except that if the four amendments of the mandatory elements of the general plan permitted by state law for any given calendar year have already been utilized in 1996 prior to the effective date of this initiative, this general plan amendment shall be the first amendment inserted in the City's General Plan on January 1, 1997. If the initiative described as the Pleasanton Residential Buildout Initiative is also approved by the voters at the November, 1996 election, the General Plan amendment adopted by that initiative and the amendment adopted by this initiative shall be simultaneously inserted into the City of Pleasanton General Plan as a single amendment thereof. At such time as this general plan amendment is inserted in the City of Pleasanton General Plan, any provisions of the City of Pleasanton Zoning Ordinance, as reflected in the ordinance text itself or the City of Pleasanton Zoning Map, inconsistent with this general plan amendment shall not be enforced.
- B. Project Approvals.** Upon the effective date of this initiative, the City, and its departments, boards, commissions, officers and employees, shall not grant, or by inaction allow to be approved by operation of law, any general plan amendment,

rezoning, specific plan, subdivision map, conditional use permit, building permit or any other discretionary entitlement, which is inconsistent with this initiative.

- C. **General Plan Reorganization.** *The General Plan may be reorganized, and individual provisions may be renumbered or reordered in the course of ongoing updates of the General Plan in accordance with the requirements of state law, but Land Use Policy 11 and Programs 11.1 through 11.5 shall continue to be included in the General Plan unless repealed or amended pursuant to the procedures set forth above or by the voters of the City.*
- D. **Takings.** *The City Council may amend the UGB if it makes each of the following findings:*
- (1) *That an application for an amendment to the Urban Growth Boundary has been rejected by the voters of the City of Pleasanton;*
 - (2) *That following the rejection of the proposed amendment to the Urban Growth Boundary the final judgment of a court of competent jurisdiction concludes that the application of any aspect of Land Use Policy 11 and programs 11.1 through 11.4 would constitute an unconstitutional taking of a landowner's property; and*
 - (3) *That the amendment and associated land use designation will allow additional land uses only to the minimum extent necessary to avoid the unconstitutional taking of the landowner's property.*

Section 7. Exemptions for Certain Projects

This initiative shall not apply to any development project that has obtained as of the effective date of the initiative a vested right pursuant to state law.

Section 8. Severability

If any portion of this initiative is hereafter declared invalid by a court of competent jurisdiction, all remaining portions are to be considered valid and shall remain in full force and effect.

Section 9. Amendment or Repeal

This initiative may be amended or repealed only by the voters of the City of Pleasanton at a City election.

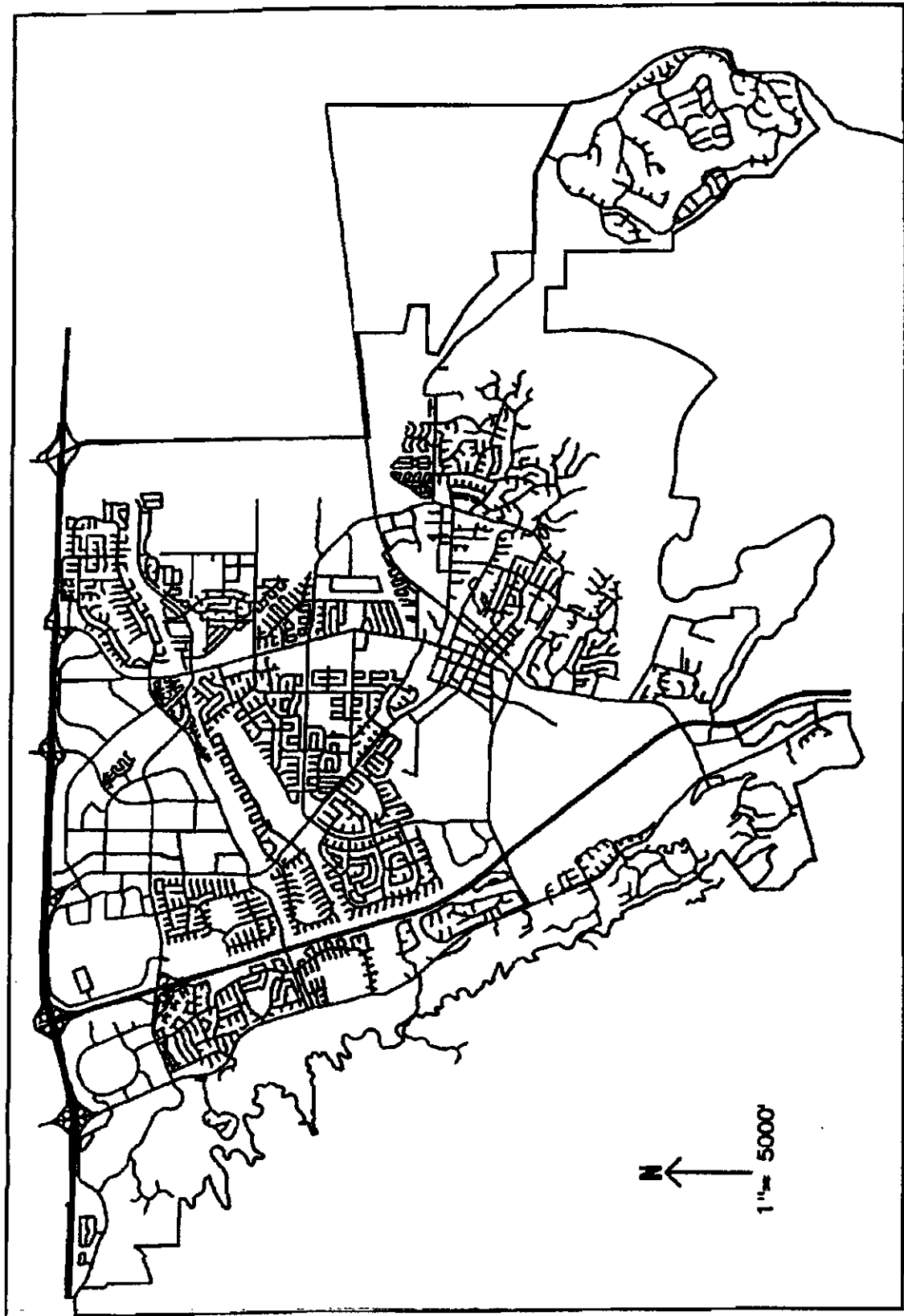
Exhibit A

City of Pleasanton Land Use Designations Map (Reduced Copy)



URBAN GROWTH BOUNDARY
August 1996
EXHIBIT A

PLEASANTON GENERAL PLAN



THE PLEASANTON RESIDENTIAL BUILDOUT INITIATIVE

The People of the City of Pleasanton do hereby ordain as follows:

Section 1. Declaration of Purpose

The purpose of this measure is to:

- A. *Achieve and maintain within the City of Pleasanton a complete, well-rounded community of desirable neighborhoods, a strong employment base and a variety of community facilities.*
- B. *Develop the City of Pleasanton in an efficient, logical, and orderly fashion.*
- C. *Reaffirm and readopt General Plan programs and policies establishing Pleasanton's maximum number of residential units.*
- D. *Provide a method for residents to participate in the review and amendments to the City's General Plan by requiring any change to the maximum number of residential units to be approved by a vote of the people.*

Section 2. Findings

- A. *Holding capacity is the ultimate size of the community that can be accommodated if all land uses shown on the General Plan Map were to be built at intensities allowed in the General Plan. Capacity is expressed in terms of housing units, population, commercial/office/industrial building floor area, and jobs, all at buildout.*
- B. *If all residential land shown on the General Plan Map were built out at intensities allowed by the General Plan, Pleasanton would contain approximately 29,000 housing units. That buildout number has not changed significantly in the last 10 years and is calculated by assuming General Plan policies and that a mid range of densities will be developed on the remaining vacant land within the City's Urban Growth Boundary.*
- C. *The residential buildout policies in this initiative support the General Plan's central policy that adequate housing is essential to a thriving community. The Pleasanton General Plan promotes efficient housing development in the City through policies and programs which encourage infill development, facilitate constructing second dwelling units, promote affordable housing through in-lieu fees and otherwise, and endeavor to meet Pleasanton's share of regional housing needs. Moreover, the Pleasanton General Plan recognizes that the essence of the jobs/housing issue is to recognize different types of commute behavior and to provide adequate housing*

opportunities within the commute area desired by different workers/commuters. Pleasanton has adopted an approach which plans for a balance of jobs and housing within the Tri-Valley commute area and has taken significant steps to contribute its share of Tri-Valley housing while retaining its role as an employment center. As a result, residential and other land use designations in the General Plan are sufficient to accommodate the expected increase in the City's population.

D. In order to further the principles described in finding C, above, the residential buildout policies in this initiative are based on a realistic assessment of Pleasanton's ability to extend City services such as sewer and water and is designed to protect environmentally sensitive areas such as the Ridgeland and the Southeast hills. The residential buildout cap complements General Plan policies promoting additional housing opportunities, emphasizing infill development, and supporting a thriving employment center. The residential buildout cap will:

- Encourage efficient growth patterns and protect the City of Pleasanton's quality of life by concentrating future development largely within existing developed areas;
- Foster and protect the community character of Pleasanton while encouraging appropriate economic development in accordance with the City's unique local conditions;
- Allow the City to continue to meet the housing needs for all economic segments of the population, especially lower and moderate income households, by directing the development of housing into areas where services and infrastructure can be provided more cost effectively; and
- Promote stability in long-term planning for the City by establishing a cornerstone policy within the General Plan designating the limits of long-term urban development but allowing sufficient flexibility to respond to the City's changing needs over time.

E. In recognition of the holding capacity of the City of Pleasanton and in order to achieve the purposes set forth above, the Land Use Element of the General Plan adopted August 6, 1996 provides in Goal 1, Policy 15 and its related program the following:

Policy 15: Maintain a maximum housing buildout of 29,000 units within the Planning Area.

Program 15.1: Monitor and zone future residential developments so as not to exceed the maximum housing buildout.

F. The General Plan has a policy that Pleasanton residents will participate in land-use planning and decision making and that Pleasanton residents will participate in the

review and update of the General Plan as conditions change. Consistent with that policy and to ensure that the maximum number of housing units at buildout remains at 29,000 without the Pleasanton voters' consent, the voters must approve an amendment to the Pleasanton General Plan as provided in this measure.

Section 3. General Plan Amendments Regarding the Maximum Residential Buildout

A. Reaffirmation and Readoption of Residential Buildout Policy

The Pleasanton Housing Cap Initiative hereby reaffirms and readopts Land Use Element Policy 15 and its Program 15.1 of the City of Pleasanton General Plan as set forth in section 2.E of this initiative.

B. Adoption of Residential Buildout Policy

The following text is added to the Land Use Element of the City of Pleasanton General Plan adopted August 6, 1996 immediately following Goal 1, Policy 15, Program 15.1:

Program 15.2: The foregoing Policy 15 and Program 15.1, and this Program 15.2, shall be amended only by a vote of the people.

Section 4. Implementation

A. Effective Date. This Initiative shall take effect if a majority of the votes cast on the Initiative are in favor of its adoption. Upon the effective date of this initiative, the provisions of section 3 of the initiative are hereby inserted into the Land Use Element of the City of Pleasanton General Plan as an amendment thereof, except that if the four amendments of the mandatory elements of the general plan permitted by state law for any given calendar year have already been utilized in 1996 prior to the effective date of this initiative, this general plan amendment shall be the first amendment inserted in the City's General Plan on January 1, 1997. If the initiative described as the Pleasanton Urban Growth Boundary Initiative is also approved by the voters at the November, 1996 election, the General Plan amendment adopted by that initiative and the amendment adopted by this initiative shall be simultaneously inserted into the City of Pleasanton General Plan as a single amendment thereof. At such time as this general plan amendment is inserted in the City of Pleasanton General Plan, any provisions of the City of Pleasanton Zoning Ordinance, as reflected in the ordinance text itself or the City of Pleasanton Zoning Map, inconsistent with this general plan amendment shall not be enforced.

B. Project Approvals. Upon the effective date of this initiative, the City, and its departments, boards, commissions, officers and employees, shall not grant, or by inaction allow to be approved by operation of law, any general plan amendment, rezoning, specific plan, subdivision map, conditional use permit, building permit or any other discretionary entitlement, which is inconsistent with this initiative.

- C. **General Plan Reorganization.** The General Plan may be reorganized, and individual provisions may be renumbered or reordered in the course of ongoing updates of the General Plan in accordance with the requirements of state law, but Land Use Policy 15 and Programs 15.1 through 15.2 shall continue to be included in the General Plan unless repealed or amended pursuant to the procedures set forth above or by the voters of the City.
- D. **Takings.** The City Council may amend the policy and/or programs adopted by this initiative if it makes each of the following findings:
- (1) That an application for an amendment to the policy and/or programs adopted by this initiative has been rejected by the voters of the City of Pleasanton;
 - (2) That following the rejection of the proposed amendment to the policy and/or programs adopted by this initiative, the final judgment of a court of competent jurisdiction concludes that the application of any aspect of that policy and/or programs would constitute an unconstitutional taking of a landowner's property; and
 - (3) That the amendment will allow additional residential development only to the minimum extent necessary to avoid the unconstitutional taking of the landowner's property.

Section 5. Exemptions for Certain Projects

This initiative shall not apply to any development project that has obtained as of the effective date of the initiative a vested right pursuant to state law.

Section 6. Severability

If any portion of this initiative is hereafter declared invalid by a court of competent jurisdiction, all remaining portions are to be considered valid and shall remain in full force and effect.

Section 7. Amendment or Repeal

This initiative may be amended or repealed only by the voters of the City of Pleasanton at a City election.

ATTACHMENT 3

References to the Housing Cap in the 2005 – 2025 General Plan

General Plan Element/Chapter	Page	Section	Comment
Introduction	1-3	General Plan Accomplishments	
Land Use	Table of Contents		
Land Use	2-14	Growth Management	Bottom of page
Land Use	2-15	Residential Cap	Whole section to be deleted
Land Use	2-17	Holding Capacity	Second paragraph
Land Use	2-23	General Plan Land Uses	Top of page
Land Use	2-24	Mixed Use	Bottom of page
Land Use	2-37	Program 23.1	Program to be rewritten
Land Use	2-37	Policy 24	Policy to be deleted
Land Use	2-37	Program 24.1	Program to be deleted
Land Use	2-37	Program 24.3	Program to be deleted
Air Quality and Climate Change	9-15	Pleasanton's Response to Climate Change	Top right of page

Appendix A: Regional Housing Needs Allocation, 2007 to 2014

San Francisco Bay Area Housing Needs Allocation, 2007 to 2014

	Very Low, <50%	Low, <80%	Moderate, <120%	Above Moderate	Total
SF Bay Area Total	48,840	35,102	41,316	89,242	214,500

Alameda County Housing Needs Allocation, 2007 to 2014

	Very Low, <50%	Low, <80%	Moderate, <120%	Above Moderate	Total
Alameda	482	329	392	843	2,046
Albany	64	43	52	117	276
Berkeley	328	424	549	1,130	2,431
Dublin	1,092	661	653	924	3,330
Emeryville	186	174	219	558	1,137
Fremont	1,348	887	876	1,269	4,380
Hayward	768	483	569	1,573	3,393
Livermore	1,038	660	683	1,013	3,394
Newark	257	160	155	291	863
Oakland	1,900	2,098	3,142	7,489	14,629
Piedmont	13	10	11	6	40
Pleasanton	1,076	728	720	753	3,277
San Leandro	368	228	277	757	1,630
Union City	561	391	380	612	1,944
Unincorporated	536	340	400	891	2,167
Alameda Total	10,017	7,616	9,078	18,226	44,937

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Division of Housing Policy Development

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**STATE HOUSING ELEMENT LAW****Overview**

State law requires each city and county to adopt a general plan containing at least seven mandatory elements including housing. Unlike the other general plan elements, the housing element, required to be updated every five to six years, is subject to detailed statutory requirements and mandatory review by a State agency, the California Department of Housing and Community Development (Department). Housing elements have been mandatory portions of local general plans since 1969. This reflects the statutory recognition that housing is a matter of statewide importance and cooperation between government and the private sector is critical to attainment of the State's housing goals. The availability of an adequate supply of housing affordable to workers, families, and seniors is critical to the State's long-term economic competitiveness and the quality of life for all Californians.

Housing element law requires local governments to adequately plan to meet their existing and projected housing needs including their share of the regional housing need. Housing element law is the State's primary market-based strategy to increase housing supply, affordability and choice. The law recognizes that in order for the private sector to adequately address housing needs and demand, local governments must adopt land-use plans and regulatory schemes that provide opportunities for, and do not unduly constrain, housing development.

The housing element process begins with the Department allocating a region's share of the statewide housing need to the appropriate Councils of Governments (COG) based on Department of Finance population projections and regional population forecasts used in preparing regional transportation plans. The COG develops a Regional Housing Need Plan (RHNP) allocating the region's share of the statewide need to the cities and counties within the region. The RHNP is required to promote the following objectives to:

- (1) Increase the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner;
- (2) Promote infill development and socioeconomic equity, the protection of environmental and agricultural resources, and the encouragement of efficient development patterns; and
- (3) Promote an improved intraregional relationship between jobs and housing.

Housing element law recognizes the most critical decisions regarding housing development occur at the local level within the context of the periodically updated general plan. The housing element component of the general plan requires local governments to

State Housing Element Law

Page 2

balance the need for growth, including the need for additional housing, against other competing local interests. Housing element law promotes the State's interest in encouraging open markets and providing opportunities for the private sector to address the State's housing demand, while leaving the ultimate decision about how and where to plan for growth at the regional and local levels. While land-use planning is fundamentally a local issue, the availability of housing is a matter of statewide importance. Housing element law and the RHNP process requires local governments to be accountable for ensuring that projected housing needs can be accommodated. The process maintains local control over where and what type of development should occur in local communities while providing the opportunity for the private sector to meet market demand.

In general, a housing element must at least include the following components:

A Housing Needs Assessment:

- Existing Needs - The number of households overpaying for housing, living in overcrowded conditions, or with special housing needs (e.g., the elderly, large families, homeless), the number of housing units in need of repair, and assisted affordable units at-risk of converting to market-rate.
- Projected Needs - The city or county's share of the regional housing need as established in the RHNP prepared by the COG. The allocation establishes the number of new units needed, by income category, to accommodate expected population growth over the planning period of the housing element. The RHNP provides a benchmark for evaluating the adequacy of local zoning and regulatory actions to ensure each local government is providing sufficient appropriately designated land and opportunities for housing development to address population growth and job generation.

A Sites Inventory and Analysis:

The element must include a detailed land inventory and analysis including a site specific inventory listing properties, zoning and general plan designation, size and existing uses; a general analysis of environmental constraints and the availability of infrastructure, and evaluation of the suitability, availability and realistic development capacity of sites to accommodate the jurisdiction's share of the regional housing need by income level. If the analysis does not demonstrate adequate sites, appropriately zoned to meet the jurisdictions share of the regional housing need, by income level, the element must include a program to provide the needed sites including providing zoning that allows owner-occupied and rental multifamily uses "by-right" with minimum densities and development standards that allow at least 16 units per site for sites.

 **An Analysis of Constraints on Housing:**

- Governmental - Includes land-use controls, fees and exactions, on- and off-site improvement requirements, building codes and their enforcement, permit and processing procedures, and potential constraints on the development or improvement of housing for persons with disabilities.

 **Housing Programs**

Programs are required to identify adequate sites to accommodate the locality's share of the regional housing need; assist in the development of housing for extremely low, lower- and moderate-income households; remove or mitigate governmental constraints; conserve and improve the existing affordable housing stock; promote equal housing opportunity; and preserve the at-risk units identified.

 **Quantified Objectives**

Estimates the maximum number of units, by income level, to be constructed, rehabilitated, and conserved over the planning period of the element.