



NOTES/CORRECTIONS for the DECEMBER 22, 2022
PLANNING COMMISSION MEETING

**Modifications appear in italics, new text is underlined, and deleted text appears as ~~strikethrough~~.*

Item 1. 2023-2031 HOUSING ELEMENT UPDATE – CITYWIDE - (PLN2022-00335)

Staff requests that the following corrections be included in Exhibit A (Draft Housing Element) of the staff report:

Exhibit A:

1. The following comment letters regarding the Draft Housing Element were recently received:
 - a. A letter from a local housing advocacy group, Fremont for Everyone, delivered by email on December 19, 2022.
 - b. A letter from a group called “Residents for Residential Development,” postmarked December 15, 2022, and received by US Mail on December 20, 2022.

The text of the comment letters and staff’s responses to comments (as shown in Attachment 1 to this memo) are hereby added to Appendix B (Response to Public Comments) of the Draft Housing Element.

Prior to the City Council hearing for this item, staff will follow up with Fremont for Everyone and offer to discuss their questions and comments further. The letter from “Residents for Residential Development” did not include a name or contact information in their letter or envelope. If they provide a means to contact them, staff will extend the same courtesy to that group as well.

2. The comment letters in Appendix B (Response to Public Comments) of the Draft Housing Element were inadvertently omitted from the latest draft of the Housing Element. The public comments, as shown in Attachment 2, are hereby added to the end of Appendix B.
3. Program 69 on page 2-35 is hereby amended to clarify that all zoning text amendments proposed as part of that program would be consistent with the Group Home Technical Advisory issued by the Department of Housing and Community Development on December 20, 2022.
4. Table 4-3 of the Draft Housing Element is hereby amended to show the population in Fremont in 1990 as 173,339.
5. Page numbers within Chapter 8 have been revised for clarity and consistency.
6. Page 5-43 and page 8-41 of the Draft Housing Element is hereby amended to reference “AB 1397” instead of “AB 1793”

7. The key of Table 8-16 of the Draft Housing Element is hereby amended to clarify that the column regarding less than 0.5 floor area ratios is "O" instead of "N."

RESPECTFULLY SUBMITTED,

A handwritten signature in blue ink, appearing to read "Wayland Li".

WAYLAND LI, AICP, PRINCIPAL PLANNER FOR

JOEL PULLEN, AICP, SECRETARY
PLANNING COMMISSION

Attachment 1 - Additional Responses to Public Comments

Comment Letter #29 Residents for Residential Development December 8, 2022

- 29.1. *The commenter opines that existing leases, CC&Rs, and reciprocal parking and access rights serve as impediments to redevelopment of retail centers with housing, and therefore should not be counted as inventory sites.*

The commenter cites Site 118 in the Sites Inventory (39160 Paseo Padre Parkway) as a “good test case” to argue that redevelopment will not occur in retail centers because existing lease agreements, reciprocal parking, and CC&Rs serve as impediments to redevelopment. The commenter requests that the City provide substantial evidence demonstrating that this site may be redeveloped with housing for this “test case.”

The City’s older shopping centers and commercial uses are among the strongest and most probable sites in the City for new housing development during the upcoming planning period. As discussed in Chapter 8 of the Housing Element, their viability for redevelopment is evidenced by a facilitative policy and regulatory framework, a proven track record in the City for redeveloping similar sites with housing, a clear trend of development activity and developer interest on similar sites, established market trends regarding viability of commercial uses and likelihood for redevelopment, and strong Housing Element programs supporting the redevelopment of these sites

The City’s policy and regulatory framework facilitates the redevelopment of commercial centers. Redevelopment of older shopping centers and commercial uses with housing is a core principle of the City’s strategically urban growth framework in the 2011 Fremont General Plan. Land Use Element Policy 2-4.6 calls for redevelopment of commercial centers, and Land Use Element Policy 2-4.12 calls for multi-family housing to be a key component of retail center redevelopment. Implementation Measure 2-4.6 calls for evaluation and “pruning” back of underperforming commercial centers. This specific implementation measure led to the preparation of retail and commercial strategy studies for the Irvington and Mission San Jose Districts, which went on to support housing projects on commercial sites, including the multi-family residential Boulevard Heights project in the Irvington District built on the former Connolly’s Shopping Center.

The presence of parking, use, lease and access agreements are fairly common for commercial centers, but do not impede their redevelopment, as shown through the City’s track record of developing such sites and addressing these complexities. For example, the Fremont Bank Residences project was successfully entitled with the City entitlement process resolving a dispute among property owners regarding parking rights. The Fremont Hub Mixed-Use project coordinates redevelopment in an area of the shopping center that does not disrupt the commercial activity of other users, and relocates an existing tenant with a lease agreement into an alternative space. Various national, statewide and regional studies, such as “Residential Redevelopment of Commercially Zoned Land in California” (December 2020) by the Turner Center point to increasing underutilization of retail properties and high vacancy rates of commercial centers, as accelerated by the COVID-19 pandemic, that enhance the probability of redevelopment of these sites.

Chapter 8 describes market conditions consistent with recent redevelopment in the City, including physical underutilization; economic obsolescence of existing uses as indicated by vacancies (particularly anchor tenant vacancies), blight, or low improvement-to-land value ratios; developer and/or property owner interest in residential or mixed-use development; and site location in high resource areas, opportunity zones, or near high quality transit. Inventory sites are keyed to these characteristics, and each site is associated with multiple characteristics evidencing their likelihood for redevelopment.

Planning Division staff receives regular development interest on commercial centers in the inventory, and multiple proposals for residential development projects on commercial sites have been received and processed, as listed in Chapter 8.

The Draft Housing Element includes various programs specifically aimed at unlocking the development potential of these sites, including Program 35 establishing minimum density on commercial mixed-use sites outside of TOD areas, Program 36 updating mixed-use zoning standards to support housing, Program 34 eliminating minimum parking near transit, Program 37 increasing maximum FARs in various commercial zones, and Program 17 adopting objective design standards, among others. Staff is committed to continuing to engage with the community to discuss other potential ideas and measures to further facilitate redevelopment of these sites.

Regarding the test case (Site I 18) proposed by the commenter, parking and lease agreements exist in the shopping center, but do not impede residential development. Sufficient land area exists at the site, particularly in the southern end of the shopping center, and in the rear of the shopping center facing the Fremont BART Station to support various partial redevelopment configurations, as conceptually diagrammed and analyzed in the City Center Community Plan. The City Center Community Plan provides maximum flexibility for development with a provision allowing for “incremental compliance” so that planned housing projects on portions of these kinds of sites can move forward while accommodating existing users that remain. With the location of the site within ½ mile of the Fremont BART Station and through implementation of Program 34, the site would not be non-conforming with regards to parking no matter how much of the parking area is redeveloped. The City Center-Urban Office Zoning District provides for development up to 120 feet in height with no maximum density, providing for significant residential development potential, which is intentionally underestimated in the Housing Element sites inventory in order to be conservative. Not surprisingly, since the publication of the Draft Housing Element, a Preliminary Review Procedure application and a Preliminary Application pursuant to SB 330 were submitted by the property owner to redevelop a portion of the test case site with multi-family housing through the demolition of an anchor tenant space and redevelopment of underutilized parking area. Based on the information discussed above, and the presence of an actual development proposal on the site, there is substantial evidence that Site I 18 is likely to be redeveloped with housing during the planning period. This good test case is indicative of the strong development potential of the shopping center and commercial use sites in the inventory.

Comment Letter #30
Fremont For Everyone
December 19, 2022

- 30.1. *The commenter expresses support for the comments and recommendations in HCD's findings letter dated November 22, 2022.*

Staff have incorporated HCD's recommendations into the Adoption Draft of the Housing Element, as described in the December 22, 2022 Planning Commission Staff Report.

- 30.2. *The commenter advocates for proactive code enforcement for substandard housing violations.*

The targeted proactive code enforcement activities described in the Housing Element maximize the effectiveness of limited code compliance resources to address substandard housing. The City has additionally added a component to Program 2 (Training for Apartment Owners and Property Managers) to do targeted, proactive outreach regarding code compliance requirements within neighborhoods with the highest incidence of substandard housing.

- 30.3. *The commenter advocates for amending Program 33 (Add Intensity in High Resource Single-Family Neighborhoods near Transit) to utilize SB 10 to allow up to 10 units per lot, and/or allow for additional ADUs on lots created through an SB 9 urban lot split.*

Program 33 is focused on adding density to single-family neighborhoods near transit. Lot sizes within the targeted neighborhoods are typically around 6,000 square feet in area. When the City has previously rezoned lots of this size to allow small apartment buildings, there has not been significant interest in redevelopment. For example, the Bay Street Planned District allows up to six units on multiple 5,000 square foot lots in the Irvington Town Center. None of these parcels have re-developed since the adoption of the Planned District in 2007, and only one parcel has been entitled. This is despite permissive zoning standards, including no vehicular parking requirements, intended to facilitate high-density residential development. The City understands that financing and liability assignment currently discourage these types of small-scale projects even when the zoning is permissive.

Based on these historic permitting trends, City staff feel that it is significantly more likely that these lots are re-developed with additional ADUs compared to small apartment projects. Therefore, the City has committed to developing a bonus ADU program as the most feasible option for adding density within these neighborhoods.

Program 32 involves developing a local ordinance to implement SB 9 that applies to the entire City. This program requires that the City implement SB 9 in a way that facilitates new homeownership opportunities, which may include allowing ADUs on lots created through SB 9 urban lot splits.

- 30.4. *The commenter asks why reused sites from previous Housing Element cycles will be redeveloped with housing during the current cycle. The commenter also asks if more can be done to encourage redevelopment of these reused sites.*

Chapter 2 of the Draft Housing Element commits to a slate of implementation measures with a stated goal of promoting the production of new affordable and market rate housing on these sites, including Program 44 to allow for by-right approval of projects with 20% affordable units,

Program 40 to promote the inventory of opportunity sites, and Program 17 to develop objective design standards to provide a predictable basis to review housing projects. During the upcoming planning period, the City will remain committed to looking for new ways and opportunities, and listening to ideas from the community, to meet the City's housing goals.

- 30.5. *The commenter recommends adoption of an ordinance that allows for maximum floor area to be calculated based on the size of an entire commercial center in cases where a commercial center consists of multiple lots.*

City development standards are written based on a single lot because it is a unit of ownership. A shopping center with multiple lots may be owned by multiple different entities. In this case, if floor area ratio is calculated for the entire shopping center, it would mean that the owner that decided to build first would be able to construct to a higher intensity, and other owners who wanted to build in the future would be limited. This is not a consistent or equitable pattern of development. If multiple lots are owned by the same property owner or the property owners collaborate on a development proposal, then they can apply for a by-right, ministerial lot combination in order to combine the lots and apply the floor area ratio standard to the entire shopping center as a single unit of development.

In Program 36, the City has committed to developing a new mixed-use ordinance. As part of the development of that ordinance, staff will examine how the standards would apply to non-standard sites, such as incremental shopping center redevelopments, in order to make sure that they do not constrain redevelopment.

- 30.6. *The commenter asks why some inventory sites, such as Site 268, can have a lower number of units in the sites inventory than currently exist. For example, Site 268 shows the existing use as a triplex, but the Sites Inventory only shows two units.*

The sites inventory indicates net new units. For example, Site 268 is assumed to have capacity to accommodate two additional units beyond the three that currently exist at the site.

December 8, 2022

Ms. Reena Rao
Vice Chair, Planning Commission
City of Fremont
3300 Capitol Avenue
Fremont, CA 94538

RE: City of Fremont's 6th Cycle Housing Element Update (2023-2031)

Dear Ms. Rao,

As you know, the state has a well-documented housing crisis, and the State of California is requiring that our city help facilitate nearly 13,000 new housing units in Fremont during the next eight years. If we fail to adopt state approved plans and regulations, the City will be subjected to penalties and can face significant financial and legal ramifications. City staff has detailed the consequences and penalties (including the loss of local land use power and moratorium on all permits) that Fremont may face during some of the public meetings during the housing element update process. We cannot escape this requirement and must get it right.

Given the state mandate, we don't understand why the City's planning staff is designating existing offices, existing retail centers and self-storage centers in the site inventory list for the housing element update without "substantial evidence" showing that these sites can be redeveloped. Simply driving by these non-vacant sites shows many, many existing businesses and multiple tenants making it highly unlikely that any of these locations will be redeveloped into badly needed housing.

Identifying non-vacant sites on the inventory list is problematic for several reasons: i) the existing tenant leases, ii) parking and reciprocal access requirements, and iii) Covenants, Conditions and Restrictions (CC&R's) which are all impediments to redevelopment and nearly impossible to overcome. The State of California Department of Housing and Community Development ("HCD") stipulates that a City not consider non-vacant sites if the "**existing use impedes additional residential development...**" HCD notified the City of this requirement in its November 22, 2022 letter and, unfortunately, the City has not performed this analysis.

Lease Impediments to Redevelopment

Almost all of the retail centers and offices identified by staff have existing leases in place which prevent re-development of the sites. Often times, tenants have long term, multi-year leases (many with lease extension options) which prevent redevelopment and, in fact, a single tenant can prevent redevelopment of a site if the tenant does not wish to cancel their lease.

Planning staff has not provided this lease impediment analysis for the non-vacant sites. The planning staff must provide a lease analysis for *each* of the non-vacant sites to show that existing leases will not be an impediment to residential development. If the City does not undertake this analysis to show that the inventory sites listed in the draft housing element can be redeveloped, the housing element is flawed and the City is subject to penalties and, even worse, will not meet its RHNA obligation. We need to make a serious effort to provide more housing in the City and designating a bunch of occupied shopping centers and office buildings is a ridiculous shell game that will not end well with HCD.

CC&R Impediments to Redevelopment

It is common knowledge that most, if not all, retail centers have CC&R's which grant reciprocal parking rights, access rights and utility rights to the tenants as well as prevent residential uses within the centers. These CC&R's are a major impediment to redevelopment and cannot be changed easily (or at all) so residential development on non-vacant sites with CC&R's is highly unlikely. Tenants never want to make parking or access more difficult for their customers so are loath to allow changes to CC&R's which will impact the customer experience nor are these tenants required to agree to any such changes to the CC&R's. Additionally, tenants generally do not like residential uses on the property because residents often complain about noise, early morning deliveries, odors from stores and restaurants serving food, and other compatibility problems. City staff has not provided any "substantial evidence" whatsoever that any of the specific sites that they have identified in their inventory list have the ability to modify their CC&R's. Further, CC&R's are typically recorded on the title of a property so it is quite easy to see which inventory property has these restrictions, but the City has not done this which should be a part of the "substantial evidence" provided. Instead, the draft housing element has used overly broad, non-site specific arguments that some redevelopment of non-vacant sites has occurred in the past so is likely to occur in the future. Please confirm that that lease and/or CC&R impediments do not exist toward residential development at the sites you have identified. It would be relatively easy for planning staff to obtain the existing CC&R's for the identified sites to confirm whether or not there are impediments to redevelopment.

Reciprocal Parking and Access Right Impediments to Redevelopment

It is standard practice that the existing tenants in retail centers have leases guaranteeing parking and access rights so every lease within an existing center would need to be amended to allow for new residential development on portions of the center where parking and drive aisles exist. Moreover, if staff contends that parking areas will be redeveloped into housing, then the loss of parking spaces for the remaining uses will render the reduced parking remaining non-compliant with the City's parking requirements. Tenants will not give up parking or access rights under their leases because that would make the customer experience worse so they will not allow any modifications to their leases, even for a reduction in their rent. The City has not provided any substantial evidence that the non-vacant sites will be able to have the existing leases modified to accommodate residential growth. This applies to

occupied retail centers, offices, medical office buildings, self-storage locations, and other existing, non-vacant uses. The city must show that the existing leases do not pose an impediment to redevelopment. It appears that planning staff has done any such lease analysis to satisfy the HCD required “substantial evidence” standard.

Test Case – 39160 Paseo Padre Parkway (Site #118)

As a case in point, City staff should start with providing the required “substantial evidence” to show that there are no impediments to residential development for the 39160 Paseo Padre Parkway site (#118 on the inventory list) which they claim can accommodate 645 units. This would be a good test case for City planning staff to provide substantial evidence that this site may be redeveloped. It appears that planning staff has no idea of the number of leases (and the length of those leases) that must be terminated or modified for this site to be redeveloped. It seems virtually certain that 645 units will never be developed at this location because of the CC&R and lease impediments described above. If the City does not provide clear, direct, site specific “substantial evidence” for this site and all of the others listed on the inventory list, the site should not be allowed to be on the housing element inventory list nor count toward the City’s RHNA obligation.

29.1

We are in critical need of housing and there are likely more than 4,779 units listed in Exhibit A attached (by address) from the City’s inventory list that are highly unlikely to ever be built because of existing tenant leases and CC&R’s. Including a few of these existing offices or retail centers might be acceptable in limited circumstances, but the list shown in Exhibit A attached reflects more than 80 properties accounting for 4,779 units which is almost 40% of the City’s RHNA requirement of 12,897 units. It appears that there has been little to no analysis to support the development potential of the nearly 5,000 units that staff claims can be developed on the non-vacant sites.

The Planning Commission has an important meeting on the housing element update scheduled for December 22, 2022. Please recognize and consider the obvious and significant impediments to redevelopment that exist on these non-vacant inventory sites. We respectfully request that you ask the planning staff the following:

1. Please defend listing each occupied site on the proposed site inventory list
2. Please provide a lease analysis for the non-vacant sites to meet the “substantial evidence” requirement of the state and show that the existing tenant leases are not an impediment to redevelopment
3. Please confirm which of the non-vacant sites have existing CC&R’s which are likely to prevent residential redevelopment
4. If a proposed inventory site does have recorded CC&R’s, please confirm that the CC&R’s do not prohibit residential uses on the site

29.1

We need to do better to ensure more housing is constructed in Fremont. Please direct the planning staff to put forth serious and viable housing sites to meet our RHNA goals, rather than numerous occupied sites that are not likely to be redeveloped any time soon. HCD will not accept the shell game approach being taken by city planners, and it will come back to harm the City in the future especially since HCD has already identified this issue in their letter of November 22, 2022.

Thank you for your service and for helping to keep Fremont thriving.

Sincerely,

Residents for Residential Development

cc: California Department of Housing and Community Development

Exhibit A

1. 39160 Paseo Padre Parkway – 645 units
2. 39410 Fremont Blvd. – 87 units
3. 3923 Stenerson Ln. – 36 units
4. 39360 Fremont Blvd. – 41 units
5. 39390 Fremont Blvd. – 49 units
6. Mowry Ave./Hastings – 11 units
7. 39310 Fremont Blvd. – 58 units
8. 3850 Beacon Ave. – 34 units
9. 3200 Mowry Ave. – 65 units
10. 3744 Mowry Ave. – 191 units
11. 3400 Mowry Ave. – 42 units
12. 3456 Mowry Ave. – 35 units
13. 3340 Mowry Ave. – 81 units
14. 3101 Walnut Ave. – 366 units
15. 39222 Fremont Blvd. – 43 units
16. 39039 Paseo Padre Parkway – 94 units
17. 36930 Fremont Blvd. – 21 units
18. 3723 Peralta Blvd. – 37 units
19. 3769 Peralta Blvd. – 13 units
20. 3833 Peralta Blvd. - 16 units
21. 3055 Mowry Ave. – 44 units
22. 38700 Paseo Padre Parkway – 75 units
23. 38750 Paseo Padre Parkway – 76 units
24. 36580 Fremont Blvd. – 41 units
25. 36640 Fremont Blvd. – 28 units
26. Beacon Ave./Fremont Blvd. – 52 units
27. 4050 Alder Ave. – 17 units
28. 36761 Fremont Blvd. – 53 units
29. 36789 Fremont Blvd. – 68 units
30. 4075 Thornton Ave. – 19 units
31. 4045 Thornton Ave. – 15 units
32. 4088 Thornton Ave. – 17 units
33. 37063 Fremont Blvd. – 28 units
34. 37119 Fremont Blvd. – 16 units
35. 37555 Dusterberry Way – 9 units
36. 37557 Dusterberry Way – 13 units
37. 4461 Peralta Blvd. – 15 units
38. 37485 Fremont Blvd. – 16 units
39. 4100 Peralta Blvd. – 92 units
40. 38487 Fremont Blvd. – 23 units
41. 38491 Fremont Blvd. – 101 units
42. 38665 Fremont Blvd. – 18 units
43. 38619 Fremont Blvd. – 65 units
44. 585 Mowry Ave. – 94 units

45. 670 Mowry Ave. – 152 units
46. 39160 Paseo Padre Parkway – 645 units
47. 43456 Ellsworth St. – 30 units
48. 1500 Washington Blvd. – 39 units
49. 40645 Fremont Blvd. – 217 units
50. 41989 Fremont Blvd. – 62 units
51. 42151 Blacow Road – 18 units
52. 39554 Paseo Padre Parkway – 18 units
53. 42088 Osgood Road – 47 units
54. Osgood Rd./Blacow Rd. – 160 units
55. 41791 Osgood Road – 20 units
56. 41094 Fremont Blvd. – 35 units
57. 41068 Fremont Blvd. – 20 units
58. 3902 Washington Blvd. – 78 units
59. 41060 Fremont Blvd. – 36 units
60. 3906 Washington Blvd. – 12 units
61. 3741 Washington Blvd. – 15 units
62. Washington Blvd./Union St. – 15 units
63. 3824 Union St. – 31 units
64. 40984 Fremont Blvd. – 30 units
65. 40968 Fremont Blvd. – 18 units
66. 40860 Fremont Blvd. – 19 units
67. 40750 Chapel Way – 12 units
68. 40820 Fremont Blvd. – 14 units
69. 40900 Fremont Blvd. – 29 units
70. 40910 Fremont Blvd. – 45 units
71. 40922 Fremont Blvd. – 31 units
72. 40880 Fremont Blvd. – 12 units
73. 40815 Fremont Blvd. – 44 units
74. 40861 Fremont Blvd. – 28 units
75. 41085 Fremont Blvd. – 55 units
76. 41057 Fremont Blvd. – 39 units
77. 41025 Trimboli Way – 35 units
78. 40786 Fremont Blvd. – 18 units
79. 39737 Paseo Padre Parkway – 29 units
80. 39767 Paseo Padre Parkway – 79 units
81. 41200 Blacow – 112 units
82. Stevenson Blvd./Blacow Rd. – 100 units
83. 35057 Fremont Blvd. – 18 units
84. 3880 Lake Arrowhead Ave. – 47 units



December 19, 2022

To: City of Fremont, California Department of Housing and Community Development

Re: Housing Element Public Comment

30.1

Fremont For Everyone supports the California Housing and Community Development (HCD) written comments to Fremont's proposed Housing Element.¹ We thank HCD for their thoroughness and support all of the concerns and recommendations that they raised.

We have a few further suggestions, many of which are based on Fremont's response to our earlier comments.

In regard to Programs:

1. Fremont for Everyone would like to see stronger language on proactive enforcement for substandard housing violations. We appreciate the city for adding language to Program 1 around proactive enforcement in response to our previous public comments, however, we don't feel that the language goes far enough. The current language relies on one unit in an apartment complex to make the first complaint before the city proactively inspects other units.

30.2

Proactive enforcement should not require any resident complaint. Rather, the City should initiate random inspections. This protects tenants in various ways. In a complaint-based system, landlords can retaliate against tenants who make complaints. In a proactive system, landlords would know that there may not have been any tenants who complained, so they should be less likely to retaliate.

Proactive enforcement language should further explicitly mention that these random inspections should check for ADA violations and that the City should enforce remedying accessibility issues that are found. It should be clarified in plain language, that in accordance with existing law, the tenant must not be forced to pay the cost of ADA accessibility renovations; instead the landlord must pay for these changes as part of their duty without displacing the current tenants or causing undue hardship on each tenant.

¹ <https://www.fremont.gov/home/showpublisheddocument/12005>

30.3

2. For Program 33, we applaud Fremont for adding a specific commitment. However, we feel that it does not go far enough to take advantage of the high value of the land in those areas. We encourage Fremont to alter the base zoning through SB 10 to allow more homes per lot in more configurations, not limited to the ADU configuration, up to 10 units per lot. Instead or in addition, the Program could explicitly clarify that the additional ADUs could be added on lots created through an SB 9 urban lot split.

In regard to the Sites Inventory:

30.4

1. In our previous public comment, we raised a concern about the large number of sites where AB 1397 applies, that is to say, sites that have appeared on previous housing elements already. The City responded to that part of our letter under the label 8.46; however, the specific concern about the number of AB 1397 sites was not addressed. Specifically, we would like to understand, given that these sites have not seen development during previous 8-year cycles, what has changed so that the City believes there is a good chance they will be developed in this cycle? Certainly, thanks to AB 1397 and the corresponding overlay zone (noted in Program 44), they now enjoy by-right approval for projects that contain enough affordable housing units. Does the city believe that that is sufficient that most of these sites will get developed this time? Is there more that can be done to facilitate development on these sites, such as zoning them to accommodate higher density?

30.5

2. Many of the high-unit-count sites are based on partial redevelopment of active shopping centers. While we agree that these would be excellent sites for housing due to the access to groceries, restaurants, and other amenities in these shopping centers, there are many challenges to this pattern of partial redevelopment. To help ensure development on these sites is a success, we recommend the city adopt an ordinance to allow homebuilders to maximize density by calculating the Floor Area Ratio based on the size of the full parcel, even in the case that said full parcel has been split into separate lots, for purposes of conforming to maximum densities specified by the zoning code.

30.6

3. There are some sites as an example and not limited to #268 (4440 Decoto Rd) where the existing use is already housing. For that particular site, the existing use is listed as "triplex," while the proposed redeveloped use is 2 units, which appears to be a net decrease in housing units. It's unclear how that would be consistent with SB 8, the Housing Crisis Act, or how it would add to the housing stock.

Thank you for your time and consideration, and for all your hard work on the Housing Element.

Sincerely,
Fremont for Everyone

Appendix B

Response to Public Comments

Purpose

The first public comment period for the Draft 2023-2031 Housing Element ran from July 8, 2022 through August 8, 2022. In order to illustrate how the revised draft reflects public input received during the comment period, staff have prepared a response to comments. The response distills the major feedback provided in each written public comment submitted during the public comment period and indicates how it has been addressed in the revised Draft 2023-2031 Housing Element.

Comments are ordered alphabetically by organization name or by first name of the individual commenting. Many comments noted the issue of tree preservation. A Topical Response to this issue has been prepared.

Topical Responses

Topical Response #1 – Tree Preservation

Multiple comments advocate for robust tree protection requirements for new housing development.

The Community Character and Conservation Elements of the General Plan acknowledge that trees are a valuable aesthetic, ecological and economic resource in the City of Fremont and include various policies and programs to promote the protection and preservation of trees in the community. The policies and programs contained in the Housing Element will not conflict with the policies and programs in the other element of the General Plan pertaining to tree preservation. The City will continue to advocate for the protection of trees through implementation of the City's Tree Preservation Ordinance, development of an Urban Forest Master Plan, and application of landscape development requirements and standards on new development projects.

Housing Element Program 17 has been amended to identify the preservation of the urban forest as a component of the "highest level of design quality" of residential development projects:

Program 17. Develop and Refine Objective Design Standards Consistent with State Law to Provide a Predictable Basis to Review Housing Projects.

The City shall revise existing design guidelines to encourage the highest level of design quality, while at the same time reducing delays and uncertainty for developers by providing clear direction on the required standards. The "highest level of design quality" refers to development that is safe, aesthetically pleasing, harmonious with its setting, respects privacy and views, preserves valuable community resources such as trees and historic resources, and supports a more sustainable community.

Responses to Comments

Comment Letter #1

Bay Area Rapid Transit (BART)

July 25, 2022

1.1. *The commenter indicates that BART has funding and staffing constraints that will limit the amount of TOD development that can take place on its station properties in the near term. With its limited resources, BART must prioritize TOD development in its station areas based on the following three criteria:*

- 1. Market readiness for TOD*
- 2. Local support for TOD*
- 3. Infrastructure needs*

In recognition of BART's need to prioritize development on its station properties, Program 63 has been expanded to better position the Fremont BART Station site to compete for resources under the prioritization criteria identified by BART:

Program 63. Prioritize Affordable Housing on Public Property.

Given that land costs are a significant constraint to housing development, land already owned by public agencies shall be prioritized for the development of affordable housing. The City shall regularly review the inventory of City-owned surplus, vacant, or underused land, no longer needed for current or foreseeable future public operations, that should be considered for sale or lease for development of affordable housing and/or shelters. The City shall prioritize the review of sites within high resource areas and comply with all requirements of the Surplus Lands Act.

The City shall also work with other public agencies to prioritize development of affordable housing on their properties and remove barriers to the construction of affordable housing on those lands.

The Fremont BART Station in particular has an underutilized parking area that could provide an opportunity for affordable housing near transit. To facilitate development on the Fremont BART Station site, the City shall take the following actions:

- Explore avenues to remain competitive for state funding resources for affordable housing. This may include obtaining the State's Pro-Housing designation, as discussed in Program 53.
- Conduct community and developer engagement around future TOD development at the Fremont BART Station site regarding development constraints, issues (including parking management near the station, and design parameters reflecting relevant guidelines, policies, and regulations adopted by BART and the City of Fremont.

Comment Letter #2
Bay Area Rapid Transit (BART)
August 3, 2022

- 2.1. *The commenter expresses concern that a 100% affordable project would not be financially feasible on the Fremont BART Station site due to the cost of developing BART land and related parking improvements.*

The City's methodology for assigning affordability levels to Housing Element sites categorizes sites that provide for a residential density above 30 dwelling units per acre (DU/AC) and are between 0.5 and 10 acres in size as being suitable for development of housing affordable to lower-income households. The assignment of a site as being suitable for development of housing affordable to lower-income households does not preclude the development of market rate housing on the site in the future.

Fremont recognizes that market rate housing may be a component of a future TOD project at the Fremont BART Station. The underlying City Center Transit Neighborhood (CC-TN) zoning designation allows for both affordable and market rate housing above the baseline density of 75 DU/AC identified in BART's adopted TOD Guidelines and AB 2923. The CC-TN zoning district has no maximum density and allows building heights up to twelve stories (145 feet) in height without accounting for additional height allowances provided under state density bonus law. Based on these parameters, significant residential development capacity exists above the target provided for in the Housing Element. The unit count in the Housing Element for the Fremont BART Station site is intended to be a highly conservative target that does not reflect the full development potential of the site.

Comment Letter #3
Building Industry Association (BIA)
July 1, 2022

- 3.1. *The commenter recommends that the City analyze development regulations including parking, FAR, height, density ranges, moratoriums on conversions of non-residential zoned land, and requiring commercial square footage within mixed use projects.*

Refer to pages 5-18 through 5-26 for a discussion of development standards, including parking requirements, FAR, height, and density ranges.

The City of Fremont does not have any moratoriums on the conversion of non-residential zoned land. Proposals that involve changing a land use designation would proceed through the City's General Plan Amendment process.

Refer to page 5-25 for a discussion of commercial square footage requirements in mixed-use zones. This section has been retitled "Minimum Commercial Component and Floor Area Ratio in Commercial Zones" in order to clarify that it contains a discussion of mixed-use requirements. Proposed Program 36 would update the mixed-use development standards to enhance their clarity and help promote thriving retail corridors while not unduly burdening housing development.

- 3.2. *The commenter recommends that the City analyze mitigation fees including park dedication fees and affordable housing fees.*

Refer to page 5-31 for a discussion of development impact fees, including park dedication fees. Refer to page 5-29 for a discussion of affordable housing in-lieu fees.

- 3.3. *The commenter recommends that the City analyze inclusionary housing mandates, community benefit plans, and “above and beyond” dedication requirements.*

Refer to page 5-29 for a discussion of the City’s affordable housing ordinance. Developers may choose from multiple compliance options, among them inclusionary on-site housing.

The following text regarding the City’s Art District programs has been added to page 5-34:

Art District Programs

The City of Fremont has established Art District programs within the City Center, Downtown, Warm Springs, and Ardenwood Technology Park areas. These programs are intended to promote the arts, provide art education, and spur economic development by creating an attractive pedestrian environment. The current Art District Fee is set at \$0.62 per gross square foot of new construction in all Art Districts. This fee is subject to an annual automatic escalation based on the Consumer Price Index (CPI). For construction projects with more than 100,000 square feet of gross area, the developer may choose to provide on-site artwork, of equivalent value, in lieu of paying up to 50% of the fee.

The following text regarding dedication requirements has been added to page 5-28:

Street Dedication and Improvements

The City’s Engineering Division requires that developers dedicate frontage to the City when it is required for the construction of public right-of-way improvements, such as roadways and sidewalks. The City requests the minimum dedication necessary to bring the adjacent street and sidewalk into conformance with the geometry called for within the General Plan. Developers are also required to fund and construct street improvements along the project street frontage, including curb, gutter, and sidewalk. As required by state law, the City exempts certain types of development, including accessory dwelling units, from street dedication and improvement requirements.

- 3.4. *The commenter recommends that the City analyze environmental constraints including fault zones and historic buildings/neighborhoods.*

Refer to page 5-27 for a discussion of environmental constraints, including geologic hazards, historic resources, and fire hazard areas. These factors were integrated into the site selection and site capacity methodology, as discussed in Chapter 8.

- 3.5. *The commenter recommends that the City analyze new taxes, including parcel taxes, community facilities districts, and revenue neutral development.*

The following text regarding additional taxes has been added on page 5-29:

Community Facilities Districts

Community facilities districts (CFDs) are special tax districts that allow the City to obtain additional funding for various infrastructure improvements. In some cities, CFDs are used similar to development impact fees in that new residential developments are required to enter a CFD in order to fund anticipated infrastructure maintenance. There are currently two CFDs within

Fremont: one in Pacific Commons and another in Warm Springs. Both CFDs contain exclusively commercial and industrial parcels. The Housing Element does not require or anticipate the establishment of any additional CFDs for residential development. The Housing Element does not propose any new parcel taxes or other taxes on residential development.

- 3.6. *The commenter recommends that the City analyze mandated labor requirements, including project labor agreements, prevailing wage requirements, local workforce requirements, union apprenticeship requirements, and local business sourcing requirements.*

The City does not have any mandated labor requirements, and none are proposed under the 2023-2031 Housing Element. Projects requesting review pursuant to certain state laws (i.e. SB 35) may be subject to mandated labor requirements as required in state law.

- 3.7. *The commenter recommends that the City analyze citizen concerns, such as NIMBY-ism and CEQA lawsuits.*

Refer to page 5-5 for a discussion of community concerns related to housing development. Community concerns about housing growth are identified as a major constraint to development on page 5-2. Programs 21 and 28 aim to bolster community support for housing and increase awareness of the benefits and need for providing housing within the community.

Refer to page 5-38 for a discussion of the environmental review process. Additional text regarding CEQA lawsuits has been added to page 5-38, as follows:

Environmental review is a major determining factor for the length of time needed to process a development application. When a project is not subject to environmental review, the processing time can be significantly shortened. When a project is subject to environmental review, additional time may be required to complete technical studies, evaluate the applicability of exemptions, and potentially prepare an Initial Study document. Environmental determinations are also subject to judicial challenge. Projects subject to CEQA may be additionally held up by lawsuits challenging the adequacy of environmental documents. Within the past planning period, the City is aware of one CEQA lawsuit filed against a housing project within the City of Fremont. This indicates the slight, but real, possibility of such challenges and associated delays.

- 3.8. *The commenter recommends that the City analyze permit processing times.*

Refer to pages 5-36 through 5-40 for a discussion of permit processing times.

- 3.9. *The commenter recommends that the City analyze land costs and construction costs.*

Refer to pages 5-4 and 5-5 for a discussion of land costs and direct/indirect development costs.

**Comment Letter #4
Coalition for Fair Housing Elements (CFHE)
July 8, 2022**

- 4.1. *The commenter expresses concern that a program to redesignate land to higher densities has been removed. The commenter asks the City to add additional programs to increase residential density.*

To clarify, the previous program referenced, Program 3.02-C, did not involve City-initiated rezoning of land to higher intensities. Program 3.02-C involved the City's consideration of General Plan Screening requests as they are received from private developers. This process remains unchanged even though the program highlighting it has been removed. The Draft 2023-2031 Housing Element commits the City to taking specific, measurable initiatives to increase density rather than only reacting to private development proposals. These increases in density will be concentrated within the transit-oriented development areas, consistent with the vision for strategic urbanism in the General Plan. However, they will not be exclusively within TOD areas. Refer to the following programs:

- Program 33. Add Intensity in High Resource Single-Family Neighborhoods within TODs.
- Program 35. Set Density Minimums Outside of TODs.
- Program 37. Update Zoning to Reflect Intensity Permitted Under SB 478.
- Program 38. Update Community Plans as Needed.

Note on page 2-17 that the language in Program 33 has been updated to reflect the City's commitment to implement this program, although a specific zoning mechanism for the program has not been finalized yet.

4.2. *The commenter asks the City to increase density within existing single-family neighborhoods.*

Under state law, properties zoned for single-family residential use can now re-develop with up to four units by-right pursuant to SB 9. This would result in a density of nearly 30 DU/AC on a standard 6,000 square foot lot. Program 32 requires that the City develop a local ordinance implementing SB 9 in a way that facilitates its adoption within existing neighborhoods. This program will add density to existing single-family neighborhoods in a way that is most practical given existing lot sizes, ownership patterns, and financing options.

4.3. *The commenter asks the City to take additional actions to streamline project approvals, including Planned Districts and design guidelines.*

Refer to Program 5, page 2-6, for actions to streamline development within existing Planned Districts. While Planned Districts do take additional time to review, they allow developers additional flexibility in designing custom regulations and can facilitate the development of particularly challenging sites. The City reviewed 13 Planned District developments during the past planning period, which is a small portion of overall development activity.

Refer to Program 17, page 2-11, for actions to update and refine the City's objective design standards. Existing design guidelines, including the Multifamily Design Guidelines mentioned in the comment, will be updated to help reduce delays and uncertainty for developers.

4.4. *The commenter asks the City to lower development impact fees and permitting fees.*

Refer to Program 50, which reduces development impact fees for affordable housing, and Program 51, which waives all development impact fees for ADUs. The remaining fees for a typical ADU development consist of \$7,040 in outside agency fees (which the City cannot alter) and \$7,120 in City permitting fees. City permitting fees are charged on a "cost-recovery" basis, meaning that the fees charged to homeowners reflect the staff time spent on administration, review, and inspection for the ADU project. Programs 24, 30, and 31, which streamline ADU development,

would assist with bringing down these development costs by reducing the amount of staff time that must be spent guiding homeowners through individual projects.

Comment Letter #5
Chaunie Langland
August 6, 2022

- 5.1. *The commenter advocates for robust tree protection requirements for new housing development.*

Program 17 has been amended to address concerns regarding tree protection. For additional discussion regarding these issues, please see Topical Response #1.

Comment Letter #6
Diane Harvey
August 6, 2022

- 6.1. *The commenter is concerned about the long-term impacts of proposed programs to waive development impact fees for ADUs and significantly reduce these fees for affordable housing projects.*

Refer to page 5-12 for a discussion of accessory dwelling unit permitting. Notably, state law does not allow the City to charge impact fees for ADUs under 750 square feet in area. The City voluntarily chooses to waive impact fees for all ADUs (which can be up to 1,200 square feet in area) to simplify regulations and reduce costs, in order to facilitate these units. Rental data indicates that ADUs in the region are a source of housing that is affordable to lower-income and moderate-income households. Refer to page 8-15 for discussion regarding the affordability of ADUs.

Refer to page 5-31 regarding a discussion of development impact fees. Development impact fees were identified a constraint on the production of affordable housing. A 50% reduction on traffic, parkland acquisition and park facilities development impact fees for deed-restricted affordable housing removes a key constraint to development.

- 6.2. *The commenter advocates for robust tree protection requirements for new housing development.*

Program 17 has been amended to address concerns regarding tree protection. For additional discussion regarding these issues, please see Topical Response #1.

Comment Letter #7
Elizabeth Newell
August 7, 2022

- 7.1. *The commenter advocates for robust tree protection requirements for new housing development.*

Program 17 has been amended to address concerns regarding tree protection. For additional discussion regarding these issues, please see Topical Response #1.

**Comment Letter #8
Fremont For Everyone
August 8, 2022**

- 8.1. *The commenter recommends that staff proactively enforce anti-substandard housing provisions.*

Refer to revised Program I. After further discussion with Code Enforcement, staff have revised this program to include proactive investigation of substandard housing problems within apartment complexes. The City reserves the right to conduct proactive code enforcement activities occur when there is a reasonable suspicion that systemic problems exist within an apartment building or complex of buildings. The following additional text has been added to Program I:

Experience has shown that individual apartments within one building have so much in common with each other that one unit has a likelihood of being representative of the others. Individual apartments at a property were all built at the same time, using the same materials, by the same work crews, and by the same design. The property owner stands to benefit if common problems are dealt with at once. The City reserves the right to conduct proactive enforcement activities when there is a reasonable suspicion that systemic problems exist within the building or complex.

- 8.2. *The commenter recommends that the City hosts an annual training for tenants about their legal rights.*

Refer to Program I3, which has been revised to add the following language about proactive trainings on tenant's rights:

Program I3. Provide Education on Tenant's Rights.

The City of Fremont contracts with Project Sentinel's Fremont Fair Housing and Landlord/Tenant Services to provide education to tenants regarding their legal rights. Project Sentinel provides fair housing information/education and investigates housing discrimination complaints. Project Sentinel also provides counseling services to tenants upon request. Counseling is provided relating to security deposits, repairs, right to entry, evictions, retaliations, and rent increases. As resources and funding are available, the City shall seek opportunities to expand educational opportunities through providing proactive training events or webinars for tenants.

- 8.3. *The commenter recommends that the City increases walkability through gentle mixed-use zoning and provision of public realm amenities.*

Allowing commercial uses within single-family residential zones is a larger land use question beyond the scope of the Housing Element. Other improvements mentioned such as sidewalks, tree cover, and bicycle infrastructure would be located within the public right-of-way. Refer to Program 6 for the program to fund improvements within the public right-of-way.

- 8.4. *The commenter recommends that a minimum percentage of the Capital Improvements Program (CIP) budget be allocated to non-car infrastructure.*

The [Capital Improvements Program \(CIP\) budget](#) is a collaboration between multiple City divisions, but primarily involves the Public Works Division and City Manager's Office. The Housing Element does not provide direction for CIP expenditures. Program 6 is included to demonstrate the City's commitment to providing infrastructure for new and existing housing developments.

Most CIP funding sources are restricted to specific purposes and percentage allocations of funding may inhibit the City's ability to fully take advantage of all possible funding sources.

- 8.5. *The commenter recommends tenant opportunity to purchase (TOPA) and good cause eviction protections for mobile homes.*

Refer to page 5-15 for a discussion of issues facing mobile home renters and owners. AB 978 (Quirk-Silva, 2021) extended the just cause eviction protections of AB 1482 to mobile home renters and owners. Refer to Section 8.7 for a discussion of TOPA.

- 8.6. *The commenter recommends levying a tax on condominium conversions.*

The City's condominium conversion ordinance already contains significant provisions to dissuade condominium conversions, as evidenced by the fact that the City has not seen any applications for condominium conversions during the current planning period (Refer to pages 6-6 and 6-14). Additional restrictions on conversions are not warranted as a policy priority.

- 8.7. *The commenter recommends changes to the Rent Review Program to strengthen enforcement, allow flexibility with hearing times, and address retaliation. The commenter also recommends tenant protection policies that would supplement existing protections under Fremont's Rent Review Program and AB 1486.*

In 2017 and 2019, the Fremont City Council considered a variety of tenant protection policies and voted to establish the current Rent Review Program. Per FMC 9.60.120, staff must annually prepare a report to the city council assessing the effectiveness of the rent review program and discuss any changes to the program as may be appropriate. Staff has not received direction from City Council to revisit or modify the Rent Review Program at this time. Program 12 has been updated in order to reflect the annual review requirements contained in FMC 9.60.120:

Program 12. Continue to Implement and Annually Review the Rent Review Ordinance.

In 2017, the Fremont City Council adopted the Rent Review Ordinance. The ordinance covers all residential rental units in Fremont, including single family homes. The Rent Review Program provides a review and formal hearing for proposed rent increases in excess of 5% in any 12-month period. A landlord must include information regarding the Rent Review Ordinance when providing notice of a rent increase. The City Council receives an update on the effectiveness of the Rent Review Ordinance each year. Information from that report shall also be provided to HCD within the Housing Element Annual Progress Report.

- 8.8. *The commenter recommends that the goal for program 15 is greater than 10 families per year.*

This is a typo; the objective was mistakenly copied from Program 14. This program applies to all affordable housing units that become available and assists more than 10 families per year. The exact number varies based on the number of deed-restricted units that come online, but historically has ranged between 50-400 families per year. The objective has been updated to reflect that this program is universally implemented during leasing. Refer to page 2-10.

- 8.9. *The commenter recommends implementing a right to return for displaced tenants.*

Refer to Program 16, which implements tenant protections in Government Code Section 65583.2(g)(3). This code section requires replacement units to be provided when lower-income housing is demolished on housing element inventory sites. SB 330, which is a separate state law, requires that lower-income tenants receive relocation assistance and a right to return when they are displaced by a housing development project.

Program 86.5 has been added to reflect the City's commitment to enforcing these state laws through the development process:

Program 86.5. Improve Tracking and Enforcement of Tenant Protection Requirements.

The City shall implement procedures to identify projects where protected lower-income housing units are proposed for demolition and redevelopment. The City shall annually track the number of units subject to replacement under Government Code Section 65583.2(g)(3) and SB 330.

Please also refer to Section 8.7 of the comment response.

- 8.10. *The commenter expresses support for Program 24 regarding ADU resources and recommends that similar resources are developed for SB 9 duplexes.*

Refer to Program 32, which commits the City to create a one-stop assistance webpage to provide technical assistance for developments under SB 9, and to provide resources promoting high standard of design and best practices.

- 8.11. *The commenter asks whether impact fees for affordable housing development can be eliminated or further reduced. The commenter mentions Fremont Unified School District (FUSD) impact fees and recommends that the City work to reduce those fees through the City Council – FUSD Liaison Committee or by sponsoring state legislation.*

The City Council's recent decision to reduce Traffic, Park Facilities, and Parkland fees by 50% for affordable housing units will drastically reduce costs and improve the efficiency of public spending for affordable housing. Pursuant to Program 25, the City will review and evaluate the fee structure every five years (next in 2026). The City Council could revisit the impact fees charged to affordable housing projects at that time based on the effectiveness of the current fee reduction program. The City does not have the ability to control the development impact fees charged by outside agencies, including the Fremont Unified School District.

- 8.12. *The commenter asks that the City add additional language to demonstrate commitment to Program 33.*

Refer to page 2-17. The language in Program 33 has been updated to reflect the City's commitment to implement this program, although a specific zoning mechanism for the program has not been finalized yet.

- 8.13. *The commenter requests that the City eliminate parking minimums or implement parking maximums citywide.*

Refer to Program 34. The City is committing to reducing or eliminating parking requirements in TOD areas. The City will also study the feasibility and impacts of eliminating residential parking

minimums citywide, with an emphasis on examining the requirements for “affordable-by-design” units.

- 8.14. *The commenter recommends various policies to increase permitted residential density throughout the city, including setting a citywide general density floor, raising densities within TOD areas, and removing maximum density regulations.*

All existing multifamily residential zoning districts already contain a density floor. Program 35 involves developing a density floor within all other districts that allow residential development. Implementation of this program would ensure that all new multifamily residential development within the City would be subject to a density floor. There are currently no maximum densities within the Downtown, City Center, and Warm Springs areas, as well as all areas designated as Town Center within the General Plan. In these areas, a development project may include as many residential units as possible within the maximum floor area ratio and height limitations. These are the transit-oriented areas in which the City is anticipating the greatest amount of development within the next planning period.

- 8.15. *The commenter recommends removing density regulations in R-3 districts and notes that SB 9 allows for higher densities than some R-3 districts.*

Current density floors within the R-3 districts vary from the lowest-density R-3-11 district with a floor of 8.8 DU/AC to the highest-density R-3-70 district with a floor of 50.1 DU/AC. These variations in density are intended to allow for a variety of housing types. SB 9 is very prescriptive in the type of development allowed at a higher density (two lots, each with a duplex). R-3 districts allow for development of townhomes, triplexes, fourplexes, and/or other small rental housing developments.

- 8.16. *The commenter recommends removing FAR requirements in commercial zones.*

Refer to page 5-25 for allowed FARs in commercial zoning districts. The lowest maximum FAR for a mixed-use project is currently 0.60 in the C-O and C-N districts. SB 478, which became effective on January 1, 2022, prohibits local agencies from imposing a FAR standard that is less than 1.0 on a housing development project that consists of 3 to 7 units, or less than 1.25 on a housing development project that consists of 8 to 10 units. Program 37 more than doubles the permitted FAR in the C-O and C-N districts. In TOD Overlay Districts, FAR maximums in commercial district are increased, facilitating additional residential development.

- 8.17. *The commenter recommends allowing ministerial review for more project types.*

Refer to page 5-36 for a discussion of projects that currently allow ministerial design review. Refer to Programs 32, 33, and 44 for programs that facilitate ministerial review for additional types of housing projects. Code-compliant rental housing developments that do not qualify for ministerial review are currently reviewed by the Zoning Administrator for conformance with objective standards.

- 8.18. *The commenter recommends adopting standards to promote private green space and other community benefits.*

The City currently requires that multifamily residential developers provide on-site “common open space” in the amount of 500 sqft plus an additional 50 sqft per unit, and “private open space” (i.e.

a balcony or patio) in the amount of 60 sqft per unit. There are objective requirements on the required dimensions of those areas to ensure they are usable, inviting spaces.

The City does not prescribe the type of common open space that a project provides. Common open space can take many forms, including community rooms, swimming pools, playgrounds, and/or private park space. The type of space provided varies based on the anticipated needs of residents, the form of the project, and constraints on the project site. Outdoor common open spaces typically contain landscaping, trees, and greenery in a type and quantity compatible with the intended use. Additional objective requirements on the design of these areas would reduce flexibility for developers with minimal impact on improving the quality of such spaces.

- 8.19. *The commenter recommends creating a publicly funded social housing program.*

In addition to the constraint posed by Article 34, the City does not currently have the technical capacity for housing development. Significant expenditure would be required in order to build this capacity on a city-by-city level. Refer to [AB 2053](#) (Lee, 2021) which proposes a social housing development agency at the state level.

- 8.20. *The commenter recommends providing incentives for deed-restricting affordable housing projects beyond 55 years.*

Refer to Section 8.11 and 8.42 for discussion of impact fees and deed restriction lengths, respectively.

- 8.21. *The commenter recommends adding programs to confirm the assumptions behind the affordability of ADUs.*

Refer to Program 88, which requires monitoring ADU affordability and construction to ensure that projections within the Housing Element remain accurate.

- 8.22. *The commenter recommends proactively addressing reasons that Fremont has previously been denied state funding for affordable housing.*

Refer to Program 53, which takes actions to help the City remain competitive in obtaining state funding resources for affordable housing. This would include proactively addressing any issues that cause the City to be denied funding, as well as working to improve competitiveness in future rounds of funding.

- 8.23. *The commenter recommends auditing affordable housing providers, landlords, and property managers to ensure that they are not discriminating against tenants.*

Project Sentinel currently conducts fair housing testing and audits within Fremont. Staff will coordinate with Project Sentinel to provide data on recent testing activities.

- 8.24. *The commenter recommends pursuing the development of additional shelter programs, including programs for families.*

Refer to Program 73, which involves the operation and expansion of shelter facilities. This program has been modified to indicate that the City plans to expand shelter options to meet the needs of people experiencing homelessness, in accordance with the level of need shown in the [Point in](#)

[Time \(PIT\) count](#). Depending on the specific program, it may be appropriate to separate services for single adults/couples and families with children.

- 8.25. *The commenter advocates for creating a dense, mixed-use area on the Fremont BART parking lot.*

The [BART TOD Guidelines](#) and the City's City Center – Transit Neighborhood (CC-TN) zoning district have already established a regulatory framework that promotes dense, walkable mixed-use development on the Fremont BART parking lot. The CC-TN district has a minimum density of 50 DU/AC and no maximum density, while BART's TOD Guidelines require a density of over 75 DU/AC. Additionally, the TOD Guidelines set a goal that 35% of housing units produced on BART property are deed-restricted affordable units. In light of this existing framework, the critical next step is to work with BART to demonstrate community interest and identify funding for development of this station area. These next steps are outlined in Program 63.

- 8.26. *The commenter identifies that zoning and discretionary approval processes are a barrier to providing affordable housing at religious facilities.*

The Housing Element sites inventory identifies nine religious facilities that have adequate zoning for the development of affordable housing. Refer to pages 8-34 through 8-43, column "C". Three of the nine sites identified are subject to AB 1397, meaning that they would be subject to by-right approval if at least 20% of the units were affordable. The other six sites could take advantage of a by-right approval process pursuant to SB 35 if at least 50% of the units provided are affordable.

Also refer to Program 28, which initiates a housing education campaign to bolster community support for affordable housing projects.

- 8.27. *The commenter recommends additional methods to provide social services that meet the day-to-day needs of unhoused residents.*

Refer to Program 72 regarding programs for services provided to unhoused residents. This program has been modified to indicate that the City plans to expand services to meet the needs of people experiencing homelessness, in accordance with the level of need shown in the [Point in Time \(PIT\) count](#).

- 8.28. *The commenter recommends implementing additional policies that prevent homelessness.*

Past surveys have repeatedly shown that the greatest root cause of homelessness is a lack of access to stable, safe, affordable housing. A foundational goal of the Draft 2023-2031 Housing Element is to increase the supply of affordable housing in the community. Also refer to Program 73, which involves the operation and expansion of shelter facilities. This program has been modified to indicate that the City plans to expand shelter options to meet the needs of people experiencing homelessness in accordance with the level of need shown in the Point in Time (PIT) count.

- 8.29. *The commenter recommends studying which types of development are solvent and fiscally responsible long-term in Fremont.*

Refer to Program 28, which calls for a housing education campaign to educate the public on the benefits of housing. New development can positively impact the fiscal health of the City through increased tax revenue. The City does not currently have funding identified for such a study, but

staff will consider this general framework as a potentially effective message on the wide-ranging benefits of housing.

- 8.30. *The commenter recommends using an empirical standard to measure which sites are likely to have housing built on them in the next eight years.*

Empirical evidence was utilized to identify housing element inventory sites. Table 8-15 identifies sites that were redeveloped with housing during the 2015-2023 planning period and identifies specific development trends associated with each site. As documented in Table 8-16, all inventory sites are associated with one or more of the development trends that were identified.

- 8.31. *The commenter recommends requiring an analysis of whether changes to the zoning ordinance or general plan would increase car dependency.*

All changes to the General Plan and zoning ordinance are analyzed for consistency with existing General Plan policies and programs. This includes consistency with Mobility Element policies to reduce car dependency, such as Policies 3-1.1 (Complete Streets); 3-1.5 (Improving Pedestrian and Bicycle Circulation) and 3-5.1 (Regional Transportation and Land Use Planning).

Substantial changes to the General Plan and zoning ordinance additionally require the City to review environmental impacts under the California Environmental Quality Act (CEQA). CEQA uses vehicle miles travelled (VMT) as an objective measurement of whether an action increases or decreases the amount of driving by the average resident or employee.

- 8.32. *The commenter recommends making changes to the zoning and building code to reduce car dependency.*

Refer to Programs 6, 34, and 39 for actions taken to improve multi-modal infrastructure and reduce car dependency.

- 8.33. *The commenter recommends requiring a minimum number of electric car charging stations in multi-family buildings.*

The California Green Building Code currently requires that 10% of all parking spaces within new multi-family buildings are designated as “EV Ready” spaces. The Fremont Municipal Code further requires that those spaces are equipped with EV chargers. Additional green building standards beyond the state and City requirements would be considered under Program 19, in coordination with the Climate Action Plan adoption and implementation process.

- 8.34. *The commenter advocates for strategies to prevent homelessness, such as banning rental application fees, assistance paying move-in fees, and permanent emergency rental assistance.*

Refer to Program 14. The Stay Housed Self-Sufficiency Program provides partial rental subsidies to eligible participants as they transition from financial instability to self-sufficiency. Funding for this program is provided from the federal government and is limited in quantity. The City expends the entire amount allocated for this purpose each year.

Also refer to Programs 81 and 83. Individuals may remain homeless because while they may have the monthly income to pay rent, they do not have the savings to also pay up-front move-in expenses such as security deposits, first/last months rent, application fees, etc. The City provides funding to non-profit social service providers to assist households in this situation.

- 8.35. *The commenter advocates for expanding the TOD area to one-mile.*

The City's TOD districts are designed to overlap with the state's definition of transit-oriented development, which applies to the area within a one-half mile radius of a major transit stop. The City selectively zones for more intense development outside of its TOD areas, such as the City Center and Downtown zoning districts, as appropriate given the surrounding infrastructure and intended development patterns.

- 8.36. *The commenter recommends requiring bicycle lanes near all high schools.*

Refer to the City's [Bicycle Master Plan](#), which discusses and prioritizes bicycle projects. The Housing Element does not provide direction for bicycle lane project priorities.

- 8.37. *The commenter recommends retroactively increasing the requirements for bicycle parking.*

The City applies its current bicycle parking requirements to development projects at existing buildings that involve substantial modification and/or reconstruction of parking facilities. This policy intends to balance the financial impact of such requirements on property owners with the City's interest in ensuring consistent bicycle infrastructure.

- 8.38. *The commenter recommends policies to increase walkable and bikeable design.*

The General Plan Mobility Element sets the agenda for the City's transportation planning goals. Multiple Mobility Element policies are aimed at reducing car dependency, including Policies 3-1.1 (Complete Streets); 3-1.5 (Improving Pedestrian and Bicycle Circulation) and 3-5.1 (Regional Transportation and Land Use Planning). New housing developments are reviewed for consistency with these policies as part of the development review process.

- 8.39. *The commenter recommends implementation of a rental relocation program.*

The California Tenant Protection Act of 2019 (AB 1482) requires that landlords within the state of California provide relocation assistance to tenants that are evicted due to "no-fault" evictions. Fremont tenants facing "no-fault" evictions are entitled to this compensation. Additionally, the City offers rental assistance through the Stay Housed program, which is designed to assist families facing "at-fault" evictions to a financial crisis. The program provides funding to help families avoid eviction and remain housed. Refer to Program 14.

- 8.40. *The commenter recommends implementing a citywide 100% affordable housing overlay.*

The City's Density Bonus Ordinance already allows substantial flexibility for affordable housing projects citywide. Projects providing 100% affordable housing receive an 80% density bonus outside of TOD areas, and unlimited density within TOD areas. Additionally, they are entitled to unlimited waiver of zoning regulations and design standards that would physically preclude construction of the project at the permitted density. Given that 100% affordable housing developers have access to these existing density bonuses and waivers, a 100% affordable housing overlay would have limited marginal benefit.

- 8.41. *The commenter recommends extending the length of time that affordable housing must be deed restricted beyond 55 years.*

Program 48 involves annual monitoring of the effectiveness of the affordable housing ordinance. This would include the effectiveness of the required term of affordability for units constructed under the ordinance. The City Council could choose to extend the term of affordability beyond 55 years through this annual review process. Staff have not received direction to extend the term of affordability at this time.

- 8.42. *The commenter recommends zoning additional areas for mixed-use.*

The City's Downtown, City Center, Warm Springs, Town Center, and most Commercial zones allow mixed-use development. Expanding types of commercial development that is permitted within primarily residential zones is a land use question beyond the scope of the Housing Element.

- 8.43. *The commenter advocates for removing zoning requirements such as height and setbacks.*

Refer to page 5-23 and the Developer Panel Notes in page A-58 in the PDF. Existing height limits were not identified as a major constraint by housing developers or staff. The Building Code has a separate height limit on wood frame construction (85 feet) which makes residential construction financially infeasible above that height. Within the City's Downtown, City Center, and Warm Springs districts, where dense development is most appropriate, height limitations allow developers to reach the 85-foot maximum. Developers have similarly proposed projects up to 85 feet in height in the Irvington TOD area, using density bonus allowances under state law.

Additionally, refer to page 5-18 and the Developer Panel Notes in page A-58 in the PDF. Existing setback requirements were not identified as a major constraint by housing developers or staff. Developers typically use setbacks to provide required open space, landscaping, utility meters/equipment, stormwater treatment, and other features that must be accommodated at the ground-floor level of the building.

- 8.44. *The commenter states that "past city housing elements have projected with confidence meeting our RHNA Allocation at every income level for every prior RHNA cycle" and that the failure to meet lower income targets in previous housing elements indicates that the City's projections are "overly optimistic"*

The site inventories included in previous housing elements were not *projections* of anticipated housing development during the planning period. They merely served to document that the jurisdiction had adequate sites available and suitable for residential development to meet the community's housing needs, as established through the RHNA process. Because significant residential capacity was created through the 2011 General Plan, both the 2015-2023 Housing Element and the draft 2023-2031 Housing Element do not include every site available and suitable for residential development in the City of Fremont. Instead, they identify the available and suitable sites determined to be most likely to be developed with housing during the planning period based on empirical data. Like the current 2015-2023 planning period, the key drivers for the City to meet its RHNA targets for the 2023-2031 planning period will be market conditions for housing, availability of funding for affordable housing, and the effectiveness of the policies and programs contained within the Housing Element.

- 8.45. *The commenter recommends that pipeline development projects take into account "data-driven and evidence-based reasons, such as historical projections realized during the current or past planning periods, to justify its projections."*

HCD's Sites Inventory Guidebook indicates that jurisdictions may credit development projects where completed entitlements have been issued towards the RHNA based on the affordability and unit count of the development. For pending projects yet to receive entitlements, jurisdictions should "demonstrate that the units can be built within the remaining planning period". All pending projects identified in Tables 8-4 and 8-5 were included in the sites inventory because they can reasonably be built during the planning period based on typical processing and construction timelines. Pending projects included in the sites inventory are generally located on sites suitable and available for residential development, and could potentially be included in the sites inventory as a vacant or underutilized site under Table 8-16. However, utilizing an actual development proposal to determine site capacity will likely yield a more accurate and reliable estimate than the site capacity methodology utilized for vacant and underutilized sites.

- 8.46. *The commenter expresses concern that the Non-Vacant Sites Analysis Methodology is not quantitative enough and recommends incorporating a value for likelihood of development as an adjustment factor.*

The site capacity methodology employs various quantitative adjustment factors including a zoning adjustment based on historical development data, an affordability adjustment based on historical development data, and a nonresidential adjustment factor based on the potential for a site to be redeveloped with a nonresidential use. Additionally, site specific adjustment factors were utilized to further discount site development capacities. These various adjustment factors are not only quantitative but also serve to produce highly conservative site capacity estimates, significantly below full development potential. Consequently, the site capacity calculations reflect "realistic development capacity" as outlined in HCD's Sites Inventory Guidebook.

- 8.47. *The commenter recommends adding absolute page numbers to the document.*

Staff will add absolute page numbers to the final Housing Element document.

Comment Letter #9

Hamza Shaikh

August 8, 2022

- 9.1. *The commenter advocates for more dense, mixed-use zoning.*

Refer to Policy 3.04, and associated Programs 34 through 39, which intensify mixed-use development within existing urban neighborhoods through revisions to density requirements and other development standards.

- 9.2. *The commenter mentions Pacific Commons as an example of car-oriented development and requests that less land is dedicated to parking.*

While the Draft 2023-2031 Housing Element focuses on strategies to promote housing production, this goal is interconnected with other City projects to invest in multi-modal transportation and reduce car dependency. Refer to Program 34, which reduces automobile parking requirements for housing development projects. Also refer to Program 39, which calls for the City to apply for competitive grant opportunities to improve pedestrian, bicycle, and street infrastructure near transit.

Comment Letter #10

Janet Quilici

August 8, 2022

- 10.1. *The commenter advocates for robust tree protection requirements for new housing development.*

Program 17 has been amended to address concerns regarding tree protection. For additional discussion regarding these issues, please see Topical Response #1.

Comment Letter #11

August 4, 2022

Joseph Depaoli

- 11.1. *The commenter requests two sites that he owns in Warm Springs to be a part of the inventory*

In zoning districts where residential uses are not a permitted use, property owners may file an application for land use or zoning changes to allow for residential uses for Planning Commission and City Council consideration. In the Warm Springs Innovation District, land use changes should consider the vision and goals contained within the Warm Springs / South Fremont Community Plan.

Comment Letter #12

August 9, 2022

Kate Chouta

- 12.1. *The commenter advocates for robust tree protection requirements for new housing development.*

Program 17 has been amended to address concerns regarding tree protection. For additional discussion regarding these issues, please see Topical Response #1.

Comment Letter #13

July 20, 2022

Kelly Abreu

- 13.1. *The commenter provides an article about the conversion of under-performing retail sites into affordable housing and identifies that there are many such sites in Mission San Jose and Centerville.*

Refer to pages 8-23 through 8-24 for a discussion of how commercial center sites were selected for the sites inventory. The proposed sites inventory acknowledges that underperforming commercial centers often present strong residential redevelopment opportunities.

Comment Letter #14

July 12, 2022

Lisa Danz

- 14.1. *The commenter requests more specificity in Program 88, which calls for additional strategies to facilitate ADU production if trends indicate a potential shortfall from the inventory assumptions.*

The Draft 2023-2031 Housing Element commits to implement multiple new policies to facilitate ADU development within the first half of the planning period, including:

- Program 24. Offer “Over the Counter” (OTC) Type Plan Checks for Qualifying Residential Projects.

- Program 30. Provide Resources to Encourage Development of Accessory Dwelling Units.
- Program 31. Amend Regulations to Facilitate Production of ADUs
- Program 71. Develop an Accessible Preapproved ADU Design.

These programs are intended to remove most known challenges to ADU production. It is unclear what additional programs may have the greatest impact given that the regulatory climate for ADUs will be drastically different after the implementation of these policies. However, in order to provide more specificity, staff has updated Program 88 as follows:

Program 88. ADU Monitoring.

The City shall track new ADUs and collect information on the use and affordability of these units. Halfway through the projection period (2027), if trends indicate a potential shortfall in meeting the estimated ADUs in the sites inventory, the City shall employ additional strategies to incentivize ADU production, and/or identify additional inventory sites to the extent necessary to accommodate the RHNA.

Potential strategies to incentivize production would vary based on the specific problem identified (i.e. number of permits, affordability, etc.) and input from applicants. Some ideas that the City may consider, which go beyond the ADU initiatives already identified in Programs 24, 30, and 31, include:

- Appointing an “ADU Ally” on staff to facilitate applications (if identified issue is the time to permit ADUs)
- Allowing bonus ADUs (if identified issue is the number of ADUs permitted)
- Developing a deed-restricted affordable ADU program (if identified issue is affordability of ADUs permitted)

14.2. *The commenter asks for a numerical analysis of the likelihood of development for inventory sites.*

The site capacity methodology employs various quantitative adjustment factors including a zoning adjustment based on historical development data, an affordability adjustment based on historical development data, and a nonresidential adjustment factor based on the potential for a site to be redeveloped with a nonresidential use. Additionally, site specific adjustment factors were utilized to further discount site development capacities. These various adjustment factors are not only quantitative but also serve to produce highly conservative site capacity estimates, significantly below full development potential. Consequently, the site capacity calculations reflect “realistic development capacity” as outlined in HCD’s Sites Inventory Guidebook.

Comment Letter #15

August 8, 2022

Lisa Danz

15.1. *The commenter identifies various typos, formatting issues, and consistency errors.*

City staff appreciate your assistance. The identified issues have been corrected.

Comment Letter #16

August 1, 2022

Lynn Miller

16.1. *The commenter advocates for robust tree protection requirements for new housing development.*

Program 17 has been amended to address concerns regarding tree protection. For additional discussion regarding these issues, please see Topical Response #1.

- 16.2. *The commenter requests that staff coordinate with the Community Services Department Tree Division.*

The Housing Element project team will reach out to the Community Services Department Tree Division and refine the Housing Element as needed based on consultation.

- 16.3. *The commenter disagrees with the proposed program to waive impact fees for ADUs and suggests an impact fee deferral program instead.*

Refer to page 5-12 for a discussion of accessory dwelling unit permitting. Notably, state law does not allow the City to charge impact fees for ADUs under 750 square feet in area. The City voluntarily chooses to waive impact fees for all ADUs (which can be up to 1,200 square feet in area) to simplify regulations and reduce costs, in order to facilitate these units.

Fee deferral programs are typically effective at reducing financing costs for housing development. However, most ADUs are self-financed through savings or existing assets, so reducing financing costs through deferral would have limited impact in facilitating these units. Staff have not found that the waiver of ADU impact fees, which has been City policy since 2017, has reduced the City's ability to provide needed services and amenities.

Comment Letter #17

July 11, 2022

Mervin Roy

- 17.1. *The commenter states that rents should be lower in senior affordable housing complexes.*

The rental price for an affordable housing unit varies depending on the funding sources used to construct that development. Federal, state, and county governments typically set the allowable rent limits for 100% affordable housing projects because they are the primary lenders. For affordable inclusionary units constructed on-site in compliance with the City of Fremont Affordable Housing Ordinance, the maximum affordable monthly rent is the annual income limit applicable to the unit (i.e. 30% AMI for extremely-low income households, 50% AMI for very-low income households, etc.), adjusted by household size, multiplied by 30 percent, and divided by 12. This amount is generally consistent with rent limits set by federal, state, and county programs.

The Draft 2023-2031 Housing Element includes a discussion of cost-burden for seniors on page 4-41. Based on this comment and others received during the public input process, staff have added the following text to page 4-41 to discuss cost-burden for seniors within affordable housing complexes:

During community outreach, staff heard that seniors in affordable housing complexes also experience cost burden. Rental rates for affordable units are typically set at around 30% of a resident's monthly income. However, residents identified that some "income" sources, such as life insurance policies, could not actually be put towards the rent payment. This made the rent more than 30% of their usable income. Additionally, residents identified that seniors often have higher medical expenses than the population at large. Large medical expenses may prevent seniors from being able to reasonably pay

30% of their fixed income towards rent. Finally, seniors who are on a fixed income may struggle to afford rent increases if they occur. These narratives demonstrate the special housing challenges that seniors face related to housing costs. Further discussion of these issues can be found on page 4-49.

- 17.2. *The commenter requests more senior housing complexes in Fremont, located close to BART, shopping centers, and downtown. The commenter notes that with more senior housing available, a lottery system would not be required to obtain housing.*

The Draft 2023-2031 Housing Element identifies that seniors as a population with special housing needs. A complete discussion of housing needs for seniors can be found on page 4-49. The Draft 2023-2031 Housing Element proposes the following general approach to meeting the housing needs of seniors: “The data suggests that Fremont should take a dual approach to senior housing. On the one hand, it will be important to continue to develop subsidized rental housing that will be accessible to elderly, low-income renters. It will also be important to implement strategies to assist seniors to stay in their existing homes.” (page 4-49)

This “dual approach” is consistent with public input, described on page 3-7, which has indicated a desire to provide diverse housing opportunities for seniors. The Draft 2023-2031 Housing Element promotes expansion of multiple housing types that may benefit seniors, including home sharing, ADUs, and deed-restricted affordable housing.

The following goals, as indicated on page 2-1, reflect the City’s commitment to increasing the supply of deed-restricted affordable senior housing during the upcoming planning period:

- Goal 3: Promote Production of New Affordable and Market-Rate Housing
- Goal 4: Maximize Support and Resources for Affordable Housing Production

More than 75% of sites identified for potential affordable housing development within the Draft 2023-2031 Housing Element are located within the City’s Transit Oriented Development (TOD) areas. These are the areas of the city with the greatest proximity to transit, shopping centers, and other services.

Comment Letter #18
August 9, 2022
Paul Nissler

- 18.1. *The commenter advocates for robust tree protection requirements for new housing development.*

Program 17 has been amended to address concerns regarding tree protection. For additional discussion regarding these issues, please see Topical Response #1.

Comment Letter #19
August 6, 2022
Richard Godfrey

19.1. *The commenter requests that an additional fee for transportation is charged on accessory dwelling units.*

The City voluntarily chooses to waive impact fees for all ADUs (which can be up to 1,200 square feet in area) to simplify regulations and reduce costs, in order to facilitate these units.

Comment Letter #20
August 6, 2022
Robert Thomas

20.1. *The commenter advocates for robust tree protection requirements for new housing development.*

Program 17 has been amended to address concerns regarding tree protection. For additional discussion regarding these issues, please see Topical Response #1.

Comment Letter #21
August 8, 2022
Steven Elman

21.1. *The commenter advocates for robust tree protection requirements for new housing development.*

Program 17 has been amended to address concerns regarding tree protection. For additional discussion regarding these issues, please see Topical Response #1.

Comment Letter #22
August 8, 2022
Tara Gill

22.1. *The commenter advocates for robust tree protection requirements for new housing development.*

Program 17 has been amended to address concerns regarding tree protection. For additional discussion regarding these issues, please see Topical Response #1.

Comment Letter #23
August 8, 2022
Timothy Gavin

23.1. *The commenter asks for more aesthetic considerations in the location and setback of ADUs.*

Location and setback requirements for ADUs are set pursuant to state law. The City does not have the ability to alter these requirements.

23.2. *The commenter advocates for robust tree protection requirements for new housing development.*

Program 17 has been amended to address concerns regarding tree protection. For additional discussion regarding these issues, please see Topical Response #1.

Comment Letter #24
August 8, 2022
Thomas Holt

24.1. *The commenter advocates for robust tree protection requirements for new housing development.*

Program 17 has been amended to address concerns regarding tree protection. For additional discussion regarding these issues, please see Topical Response #1.

Comment Letter #25
August 3, 2022
TransForm

25.1. *The commenter requests that Program 34 is revised to provide more specific direction on how the City will reduce parking requirements.*

Refer to Program 34. The City is committing to reducing or eliminating parking requirements in TOD areas. The City will also study the feasibility and impacts of eliminating residential parking minimums citywide, with an emphasis on examining the requirements for “affordable-by-design” units.

25.2. *The commenter provides suggestions for additional policies to reduce parking demand.*

The City has not identified funding for a robust study of parking reforms. The proposed parking reductions in Program 34 would be consistent with best practices and existing state laws for transit-oriented affordable developments. Additional location-specific study is not required at this time.

Unbundled parking is currently required within the Irvington transit-oriented development (TOD) area and recommended within the Warm Springs and Downtown TOD areas. Refer to FMC 18.152.080 for additional transportation demand management (TDM) policies within the City’s transit-oriented development (TOD) overlay district:

FMC 18.152.080. Other Requirements...

(e) New high intensity development shall include (1) transportation demand management (TDM) measures to promote the use of alternatives to automobile travel, and reduce total vehicle trips and vehicle trips during peak hours through site design measures, and (2) when already established, participation in a transportation demand management association supporting programs for enhanced transit ridership, biking, and walking.

(f) For residential projects, the property owner is encouraged to provide a pass for unlimited local bus transit service covering a one-month period or a functionally equivalent transit benefit at least equal to the price of a non-discounted unlimited monthly local bus pass to each purchaser or tenant of a unit, upon the renting or initial sale of the unit.

City staff works with developers on a project-by-project basis to identify TDM strategies that can be implemented for a specific development.

25.3. *The commenter supports programs to prioritize affordable housing development.*

Programs 50 and 63 remain in the revised Draft 2023-2031 Housing Element.

Comment Letter #26

August 6, 2022

Marilyn Singer

26.1. *The commenter advocates for robust tree protection requirements for new housing development.*

Program 17 has been amended to address concerns regarding tree protection. For additional discussion regarding these issues, please see Topical Response #1.

Comment Letter #27

August 7, 2022

Bonnie Kellogg

27.1. *The commenter advocates for robust tree protection requirements for new housing development.*

Program 17 has been amended to address concerns regarding tree protection. For additional discussion regarding these issues, please see Topical Response #1.

Comment Letter #28

August 7, 2022

Carol Schneider

28.1. *The commenter advocates for robust tree protection requirements for new housing development.*

Program 17 has been amended to address concerns regarding tree protection. For additional discussion regarding these issues, please see Topical Response #1.

28.2. *The commenter disagrees with the waiving or reducing impact fees for ADUs or affordable housing.*

Refer to page 5-12 for a discussion of accessory dwelling unit permitting. Notably, state law does not allow the City to charge impact fees for ADUs under 750 square feet in area. The City voluntarily chooses to waive impact fees for all ADUs (which can be up to 1,200 square feet in area) to simplify regulations and reduce costs, in order to facilitate these units.

Comment Letter #29
Residents for Residential Development
December 8, 2022

- 29.1. *The commenter opines that existing leases, CC&Rs, and reciprocal parking and access rights serve as impediments to redevelopment of retail centers with housing, and therefore should not be counted as inventory sites.*

The commenter cites Site 118 in the Sites Inventory (39160 Paseo Padre Parkway) as a “good test case” to argue that redevelopment will not occur in retail centers because existing lease agreements, reciprocal parking, and CC&Rs serve as impediments to redevelopment. The commenter requests that the City provide substantial evidence demonstrating that this site may be redeveloped with housing for this “test case.”

The City’s older shopping centers and commercial uses are among the strongest and most probable sites in the City for new housing development during the upcoming planning period. As discussed in Chapter 8 of the Housing Element, their viability for redevelopment is evidenced by a facilitative policy and regulatory framework, a proven track record in the City for redeveloping similar sites with housing, a clear trend of development activity and developer interest on similar sites, established market trends regarding viability of commercial uses and likelihood for redevelopment, and strong Housing Element programs supporting the redevelopment of these sites

The City’s policy and regulatory framework facilitates the redevelopment of commercial centers. Redevelopment of older shopping centers and commercial uses with housing is a core principle of the City’s strategically urban growth framework in the 2011 Fremont General Plan. Land Use Element Policy 2-4.6 calls for redevelopment of commercial centers, and Land Use Element Policy 2-4.12 calls for multi-family housing to be a key component of retail center redevelopment. Implementation Measure 2-4.6 calls for evaluation and “pruning” back of underperforming commercial centers. This specific implementation measure led to the preparation of retail and commercial strategy studies for the Irvington and Mission San Jose Districts, which went on to support housing projects on commercial sites, including the multi-family residential Boulevard Heights project in the Irvington District built on the former Connolly’s Shopping Center.

The presence of parking, use, lease and access agreements are fairly common for commercial centers, but do not impede their redevelopment, as shown through the City’s track record of developing such sites and addressing these complexities. For example, the Fremont Bank Residences project was successfully entitled with the City entitlement process resolving a dispute among property owners regarding parking rights. The Fremont Hub Mixed-Use project coordinates redevelopment in an area of the shopping center that does not disrupt the commercial activity of other users, and relocates an existing tenant with a lease agreement into an alternative space. Various national, statewide and regional studies, such as “Residential Redevelopment of Commercially Zoned Land in California” (December 2020) by the Turner Center point to increasing underutilization of retail properties and high vacancy rates of commercial centers, as accelerated by the COVID-19 pandemic, that enhance the probability of redevelopment of these sites.

Chapter 8 describes market conditions consistent with recent redevelopment in the City, including physical underutilization; economic obsolescence of existing uses as indicated by vacancies (particularly anchor tenant vacancies), blight, or low improvement-to-land value ratios; developer and/or property owner interest in residential or mixed-use development; and site location in high resource areas, opportunity zones, or near high quality transit. Inventory sites are keyed to these characteristics, and each site is associated with multiple characteristics evidencing their likelihood for redevelopment.

Planning Division staff receives regular development interest on commercial centers in the inventory, and multiple proposals for residential development projects on commercial sites have been received and processed, as listed in Chapter 8.

The Draft Housing Element includes various programs specifically aimed at unlocking the development potential of these sites, including Program 35 establishing minimum density on commercial mixed-use sites outside of TOD areas, Program 36 updating mixed-use zoning standards to support housing, Program 34 eliminating minimum parking near transit, Program 37 increasing maximum FARs in various commercial zones, and Program 17 adopting objective design standards, among others. Staff is committed to continuing to engage with the community to discuss other potential ideas and measures to further facilitate redevelopment of these sites.

Regarding the test case (Site 118) proposed by the commenter, parking and lease agreements exist in the shopping center, but do not impede residential development. Sufficient land area exists at the site, particularly in the southern end of the shopping center, and in the rear of the shopping center facing the Fremont BART Station to support various partial redevelopment configurations, as conceptually diagrammed and analyzed in the City Center Community Plan. The City Center Community Plan provides maximum flexibility for development with a provision allowing for “incremental compliance” so that planned housing projects on portions of these kinds of sites can move forward while accommodating existing users that remain. With the location of the site within ½ mile of the Fremont BART Station and through implementation of Program 34, the site would not be non-conforming with regards to parking no matter how much of the parking area is redeveloped. The City Center-Urban Office Zoning District provides for development up to 120 feet in height with no maximum density, providing for significant residential development potential, which is intentionally underestimated in the Housing Element sites inventory in order to be conservative. Not surprisingly, since the publication of the Draft Housing Element, a Preliminary Review Procedure application and a Preliminary Application pursuant to SB 330 were submitted by the property owner to redevelop a portion of the test case site with multi-family housing through the demolition of an anchor tenant space and redevelopment of underutilized parking area. Based on the information discussed above, and the presence of an actual development proposal on the site, there is substantial evidence that Site 118 is likely to be redeveloped with housing during the planning period. This good test case is indicative of the strong development potential of the shopping center and commercial use sites in the inventory.

Comment Letter #30
Fremont For Everyone
December 19, 2022

- 30.1. *The commenter expresses support for the comments and recommendations in HCD's findings letter dated November 22, 2022.*

Staff have incorporated HCD's recommendations into the Adoption Draft of the Housing Element, as described in the December 22, 2022 Planning Commission Staff Report.

- 30.2. *The commenter advocates for proactive code enforcement for substandard housing violations.*

The targeted proactive code enforcement activities described in the Housing Element maximize the effectiveness of limited code compliance resources to address substandard housing. The City has additionally added a component to Program 2 (Training for Apartment Owners and Property Managers) to do targeted, proactive outreach regarding code compliance requirements within neighborhoods with the highest incidence of substandard housing.

- 30.3. *The commenter advocates for amending Program 33 (Add Intensity in High Resource Single-Family Neighborhoods near Transit) to utilize SB 10 to allow up to 10 units per lot, and/or allow for additional ADUs on lots created through an SB 9 urban lot split.*

Program 33 is focused on adding density to single-family neighborhoods near transit. Lot sizes within the targeted neighborhoods are typically around 6,000 square feet in area. When the City has previously rezoned lots of this size to allow small apartment buildings, there has not been significant interest in redevelopment. For example, the Bay Street Planned District allows up to six units on multiple 5,000 square foot lots in the Irvington Town Center. None of these parcels have re-developed since the adoption of the Planned District in 2007, and only one parcel has been entitled. This is despite permissive zoning standards, including no vehicular parking requirements, intended to facilitate high-density residential development. The City understands that financing and liability assignment currently discourage these types of small-scale projects even when the zoning is permissive.

Based on these historic permitting trends, City staff feel that it is significantly more likely that these lots are re-developed with additional ADUs compared to small apartment projects. Therefore, the City has committed to developing a bonus ADU program as the most feasible option for adding density within these neighborhoods.

Program 32 involves developing a local ordinance to implement SB 9 that applies to the entire City. This program requires that the City implement SB 9 in a way that facilitates new homeownership opportunities, which may include allowing ADUs on lots created through SB 9 urban lot splits.

- 30.4. *The commenter asks why reused sites from previous Housing Element cycles will be redeveloped with housing during the current cycle. The commenter also asks if more can be done to encourage redevelopment of these reused sites.*

Chapter 2 of the Draft Housing Element commits to a slate of implementation measures with a stated goal of promoting the production of new affordable and market rate housing on these sites, including Program 44 to allow for by-right approval of projects with 20% affordable units,

Program 40 to promote the inventory of opportunity sites, and Program 17 to develop objective design standards to provide a predictable basis to review housing projects. During the upcoming planning period, the City will remain committed to looking for new ways and opportunities, and listening to ideas from the community, to meet the City's housing goals.

- 30.5. *The commenter recommends adoption of an ordinance that allows for maximum floor area to be calculated based on the size of an entire commercial center in cases where a commercial center consists of multiple lots.*

City development standards are written based on a single lot because it is a unit of ownership. A shopping center with multiple lots may be owned by multiple different entities. In this case, if floor area ratio is calculated for the entire shopping center, it would mean that the owner that decided to build first would be able to construct to a higher intensity, and other owners who wanted to build in the future would be limited. This is not a consistent or equitable pattern of development. If multiple lots are owned by the same property owner or the property owners collaborate on a development proposal, then they can apply for a by-right, ministerial lot combination in order to combine the lots and apply the floor area ratio standard to the entire shopping center as a single unit of development.

In Program 36, the City has committed to developing a new mixed-use ordinance. As part of the development of that ordinance, staff will examine how the standards would apply to non-standard sites, such as incremental shopping center redevelopments, in order to make sure that they do not constrain redevelopment.

- 30.6. *The commenter asks why some inventory sites, such as Site 268, can have a lower number of units in the sites inventory than currently exist. For example, Site 268 shows the existing use as a triplex, but the Sites Inventory only shows two units.*

The sites inventory indicates net new units. For example, Site 268 is assumed to have capacity to accommodate two additional units beyond the three that currently exist at the site.



SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
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July 25, 2022

City of Fremont
 Community Development
 39550 Liberty St.
 Fremont, CA 94538

Dear Planning Manager Pullen and Principal Planner Li:

Thank you for meeting with Tim Chan, Seung-Yen Hong, and Tobias Liebermann on March 24, 2022, indicating the City of Fremont’s (City) interest in including BART’s land in its 2023-2031 Housing Element. As the City is aware, [BART’s Transit-Oriented Development Program Work Plan](#) currently does not categorize the subject station areas as ‘Near-term (project initiation in 2020-2025)’.

It is our collective goal to deliver as much housing near transit as possible while supporting local jurisdictions in achieving the Bay Area’s regional housing goals. However, BART has limited staff resources and few funding sources for the infrastructure - most notably parking replacement - that is often required to free-up space on BART’s land for development. Given current resources, it will be challenging for BART to support development of all the land proposed in BART partner jurisdictions’ Housing Elements during the 2023-2031 cycle.

Delivering transit-oriented development (TOD) projects on BART’s land is much more complex and time consuming than development projects on private land and requires strong partnerships and commitment between BART and local jurisdictions. As noted in the previous letter issued on March 7, 2022, BART’s *TOD Work Plan* prioritizes development in its station areas based on the following three criteria:

1. Market readiness for TOD
2. Local support for TOD
3. Infrastructure needs

If conditions have changed since the last assessment in 2019/2020, the timeframe for TOD development in station areas can be updated in BART’s *TOD Work Plan*. Key considerations by BART for prioritizing development projects are 1) availability of local funding and resources to support development, including staff support and funding for community outreach, affordable housing, and infrastructure, and 2) seamless coordination with local jurisdiction staff.

Jurisdictions with station areas that are currently listed in BART’s *TOD Work Plan* timeframes of Mid-term or Long-term need to meet the following conditions to be considered for prioritization:

1. Local Support for TOD:

- a. **Local Support and Funding:** First and foremost, BART views TOD projects on its land as BART and local jurisdiction partnerships. BART TOD projects are civic destinations, transformative to the community, and often includes off-site improvements. The City must be committed to working closely with BART to

2022

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 9TH DISTRICT

1.1

find funds and resources to facilitate community outreach, discussions, and decisions on TOD development and area-wide parking. It takes several years of pre-development work prior to issuance of a Request for Proposal for developers, therefore, any development of BART land within the planning period of 2023-2031 requires sufficient dedicated BART and County staff time to advance a TOD project within a reasonable timeframe.

- b. **Prohousing Designation:** BART will prioritize projects in jurisdictions that are pursuing a [Prohousing Designation](#) by California Department of Housing and Community Development (HCD). The Prohousing Designation is emblematic of local support for housing and provides jurisdictions with an advantage such as priority processing or funding points for certain funding programs. This is a designation that has emerged from HCD since BART originally completed its work plan.
- c. **Environmental Studies:** Locally supportive zoning is a minimum standard for gauging local support. For BART's purposes, BART will determine that local zoning is supportive of TOD if the density allowed is 75 units per acre or greater, and such a density is assumed in environmental documents.

2. Infrastructure Needs:

1.1

- a. **Station Access and Parking Strategies:** BART has evaluated its development priorities based on the anticipated cost of new infrastructure, including parking replacement. As such, until BART is able to secure external sources of funding to support construction of necessary infrastructure, BART cannot pursue development. In areas requiring substantial amounts of parking (e.g. auto dependent and auto reliant stations, partner jurisdictions will need to support BART in securing funding for parking replacement or other station access improvements. Further, to address potential community opposition to replacing surface parking with housing, the City should plan for and implement a locally led parking resource assessment and management plan for at least ¼-mile radius around the station area. It should identify parking opportunities for BART riders that would minimize the number of spaces to be included the TOD project and address spillover parking concerns by neighbors. BART staff will work with the jurisdiction to provide support and guidance as needed but implementation of a parking management plan will be a local requirement.
3. **BART Policies and Standards:** Any development on BART's land is subject to BART's review procedures and approvals and shall follow relevant guidelines, policies, and regulations. The jurisdiction should commit to support and meet BART's policies and standards. Most of these policies and are summarized on our [TOD Guidelines and Procedures](#) webpage.

We look forward to building our partnerships with the City to realize our shared goal of increasing the amount of housing near transit. Please contact us to further our conversation on advancing TOD projects on BART's land.

Sincerely,



Tim Chan
Group Manager – Stations Planning

BART comment on Fremont Housing Element

Seung-Yen Hong <seung-yen.hong@bart.gov>

Wed 8/3/2022 5:19 PM

To: housingelement <housingelement@fremont.gov>

Cc: Wayland Li <wli@fremont.gov>; Tobias Liebermann <tobias.liebermann@bart.gov>; Tim Chan <TChan1@bart.gov>; Joel Pullen <JPullen@fremont.gov>

Hello,

BART provided Wayland Li with a comment letter about BART's land and the City's Housing Element on July 26, 2022. We have one additional comment specific to the Housing Element Sites Inventory. We noticed in the Housing Element Sites Inventory that BART-owned properties at the Fremont Station were shown to have all units in the Lower Income Capacity Category. While BART strongly supports affordable housing as reflected in BART policies, the amount of affordable housing that can be supported on our property is greatly dependent on the amount of affordable housing funding available including local subsidies. Given current funding availability, the size of some of the BART properties included in the sites inventory, the costs associated with developing BART land and related access and parking improvements, achieving 100% affordable units may not be feasible. In addition, the assumed density is low at 58 or 59 DU/acre. Please clarify if the City assumed there would be other types of development on the site in addition to affordable housing.

Regards,
Seung-Yen

Seung-Yen Hong, LEED Green Associate
Senior Planner, Station Area Planning
BART Planning & Development
2150 Webster St, 8th Floor
Oakland, CA. 94612
Seung-yen.hong@BART.gov
M: 510-230-3429

2.1



BUILDING INDUSTRY ASSOCIATION

psausedo@biabayarea.org

July 1, 2022

City of Fremont
3300 Capital Ave.
Fremont, CA 94538
Transmitted Electronically

Dear Sir/Madam,

RE: 6th Cycle Housing Element: Constraints Section

The Building Industry Association of the Bay Area (BIA) respectfully submits the comments contained herein regarding Fremont's draft Housing Element. Inclusive in each city's DRAFT Housing element is a requirement to include a chapter that provides a comprehensive listing and honest review of government and private sector constraints that may inhibit a city's ability to achieve buildout of its Housing Element.

Per HCD's Construction by Income Building Activity Annual Report, Fremont permitted 861 residential units in 2021 (VLI: 140, LI: 21, Mod: 0, Mkt: 700). ABAG's 6th cycle RHNA allocation (2023-2031) for Fremont is 12,897 total units i.e., VLI: 3,640, LI: 2,096, Mod: 1,996 and Mkt: 5,165. Considering the ongoing housing crisis, it is recommended that Fremont thoroughly analyze all government-imposed constraints along with non-government constraints that add to the cost and/or inhibit the city's ability to permit and produce new housing of all income levels i.e., VLI, LI, Moderate and Market Rate.

BIA recommends the Constraints Section of the city's Housing Element provide, at a minimum, a listing and analysis of the following:

GOVERNMENT IMPOSED CONSTRAINTS:

Development Regulations:

- Parking
• FAR
• Height and/or Density Ranges
• Moratoriums on conversion of non-residential zoned land
• Requiring Commercial Square Footage within Mixed-Use projects

Mitigation Fees

- Increased Park Dedication Fees
• Increase Affordable Housing Fees

Inclusionary Housing (IZ)

- Increasing Inclusionary Housing mandates i.e., accelerating/increasing VLI/LI requirements for new housing projects
• Amenity/Community Benefit Plans (Public Art, PoPo's i.e., Privately Owned/Public Open Spaces, Childcare centers)

3.1
3.2
3.3

- 3.3
- Requiring “above & beyond” dedication requirements for Parks, Roads/Transportation, etc.

Environmental Constraints

- 3.4
- Fault Zones
 - Historic Buildings/Neighborhoods

New Taxes

- 3.5
- CFD’s for Schools, Infrastructure or Services
 - New/Increased/Extended Parcel Taxes
 - Any/All New Taxes on Housing
 - Revenue “Neutral” conditions (requiring new housing pay 100% for city services)

Mandated Labor Requirements

- 3.6
- Project Labor Agreements
 - Prevailing Wage Requirements
 - “Local” Construction Workforce Requirements
 - Union Apprenticeship Requirements
 - “Local” Business Sourcing Requirement

Citizen Concerns:

- 3.7
- Nimbyism/Neighborhood Opposition
 - CEQA Lawsuits solely to stop/delay housing projects

Permit Processing Time

3.8

Long permitting processing times or permit processes that have a high degree of uncertainty i.e., discretionary reviews or processes with multiple public meetings, increase the cost of housing development for developers by (1) increasing carrying costs waiting for permits or (2) increasing the chance that a project will be rejected following a lengthy processing period.

NON-GOVERNMENT CONSTRAINTS

Land & Housing Development/Construction Costs

- 3.9
- Land (average cost per multi-family unit approaches \$100,000 throughout Bay Area)
 - Hard Costs (materials & labor)
 - Soft Costs (architects, consultants, govt fees, financing)
 - Supply-chain and inflationary costs of materials

BIA appreciates this opportunity to provide comment and recommendation on the City’s 6th Cycle Housing Element and looks forward to working with the City of Fremont to positively address the region’s on-going housing crisis.

Respectfully,



Patricia E. Sausedo, Director
BIA Bay Area South Bay Government Affairs



The City of Fremont

Via email: housingelement@fremont.gov

Cc: HousingElements@hcd.ca.gov

August 8, 2022

Re: Fremont’s Draft Housing Element

To the City of Fremont:

The Campaign for Fair Housing Elements and YIMBY Law believe that the City’s draft [housing element](#) is a good start. We appreciate the City’s thorough explanation of how it calculates “realistic development capacity” for opportunity sites. (Gov. Code § 65583.2(c)(2); see Draft, pp.8-18 to -27.) But the housing element must “remove” constraints to development, not just identify them. (Gov. Code § 65583(c)(3); see Draft, ch.5.) In particular, the City’s draft should do more to **increase density, streamline project approvals, and lower fees.**

4.1

First, increase density. As we wrote in April, Fremont is currently producing only enough housing to meet 64% of its sixth-cycle development target. Meeting the target will require a new approach. We are therefore disappointed to see Fremont *remove* its program to redesignate land for higher intensity (Draft, p.6-22). Some 88% of Fremont’s residential land is currently zoned for single-family housing (*Id.* pp.7-100 to -101 and PDF p.415), mostly below the 30 homes per acre considered favorable for affordable development (see *id.* p.5-9). High-density housing should be prioritized throughout the City, not merely “explore[d] ... near transit.” (Cf. *id.* p.2-17).

4.2

Second, streamline project approvals. The City’s effort to showcase “a diversity of housing types in numerous zoning districts” fails to grasp how arbitrary, and confusingly regulated, that “diversity” is in practice. (See Draft, pp.5-10 to -11.) *All* of

4.2

these housing types *could* be allowed everywhere; they are not. That the City has “over 700 Planned Districts” is not an achievement; it is an admission that the City’s review process for these districts has cumulatively delayed these projects by some 269-538 years, given that a planned district application takes 20-40 weeks. (Compare *id.* p.5-18, with *id.* p.5-39.) The City has ten different design review guidelines where instead it could have zero. (*Id.* p.5-26.) There is no legitimate reason to tie up housing construction in a housing shortage for want of “architectural detailing” other than “[s]tucco-textured foam trim molding” and “decorative wood corbels” on garage doors. (Cf. [Fremont Multifamily Design Guidelines](#), pp.8,32.)

4.3

Finally, “Fremont has among the highest fees in the state.” (Draft, PDF p.416.) The City must lower them. Development fees should not add six figures to the cost of a townhome. (See *id.* p.5-35.) Fees are passed onto homeowners, and even the City’s \$14,160 fee for a simple ADU adds roughly a down payment to the cost of the unit. If these fees reflect a long and uncertain development review process, as discussed above, the City should streamline those processes.

We look forward to the City’s next draft. Please contact me if you have questions.

Sincerely,



Keith Diggs

Housing Elements Advocacy Manager, YIMBY Law

keith@yimbylaw.org



ADU plan

Chaunie Langland <chaunie.langland@earthlink.net>

Sat 8/6/2022 9:59 PM

To: housingelement <housingelement@fremont.gov>

Hi,

5.1 I would like to see language included to protect our existing trees. Fremont is already short on trees and shrubs compared to the peninsula or Sacramento and so is not as nice a place to live as it could be. I would not want to see it get any worse. We should be encouraging people to plant trees. Surely the needed ADUs can be added without making our tree situation worse.

I remember seeing city code assessing fees on businesses for putting planter boxes out front. This place seems determined to cut off it's nose to spite it's face.

Regards,
Chaunie Langland
878 Cashew Way
Fremont

Protect our trees and our climate!!!

Diane Harvey <dnancyharvey@gmail.com>

Sat 8/6/2022 11:19 PM

To: housingelement <housingelement@fremont.gov>

6.1

There is no question more affordable housing is needed. But there is no language in the document that protects trees from being removed for projects. AND mitigation fees and development fees are being waived! Property owners are getting a very sweet deal in order to encourage housing units be put in all neighborhoods throughout the city. But fees that go for street and park trees are being waived.

That is extremely shortsighted.

My concern is that without specific guidelines, front yard trees will be removed without considering other options first.

Also I am concerned that the remainder of the front yard can be concreted over, creating urban decay and heat island effects.

6.2

Just when our Climate Action Plan , Parks Plan, and Urban Forest Master Plan call for much more green infrastructure, the trees we have are unprotected from property owners' whims. I am asking for absolute protection of trees as stated in our tree ordinances. There is room to accomplish housing AND protect our trees.

We need to protect our climate while we deal with our housing issue! One cannot be done without consideration for the other!

Diane Harvey

Living in Fremont since 1986

Trees!

Bee Newell <beenewell2@gmail.com>

Sun 8/7/2022 4:17 PM

To: housingelement <housingelement@fremont.gov>

Cc: Lynn Miller <rnlynn@hotmail.com>

7.1

In view of the worsening climate problem and increased carbon dioxide in the air, I implore the city to protect trees. Trees are the single best vegetation that mitigates climate disaster.

As ADUs are built have them built around or far enough from trees roots so as to protect trees from being cut down or dying.

Only policy and enforcement can save this city.

Sincerely

Elizabeth B Newell

Parkmont area, Fremont 95536



August 8, 2022

To: City of Fremont

Re: Housing Element Public Comment

Introduction

Fremont For Everyone (FFE) is a Tri-City-based grassroots advocacy organization engaged and dedicated residents who work together to help address our Statewide housing crisis. Our vision is for inclusive, affordable housing for our residents, and to ensure Fremont welcomes new neighbors for living closer to work, raising a family, and gaining a place – a home for everyone! We encourage Fremont residents to visit our website at www.fremontforeveryone.com and who are aligned with our vision to join us!

FFE's mission mirrors the objectives to be achieved under the State-mandated requirements that must be met by the City of Fremont in its updated Housing Element for the Planning Period 2023-2031 in order to obtain certification by the State's Housing and Community Development (HCD) agency.

For this reason, the Policy Committee for FFE has carefully reviewed the City's current [Draft Housing Element](#) and offered public comments orally and in writing at various Planning Commission and City Council meetings and study sessions. We have met directly with Staff during Staff's public outreach phase, including most recently, its Open House last Wednesday, August 3, 2022 at the Downtown Event Center.

Our initial comments were submitted to Staff and the Planning Commission prior to the most recent Study Session of the Planning Commission on July 28, 2022. This letter reaffirms many of the comments previously articulated taking into account the comments of the Planning Staff at the Open House and augmented by further matters for the City to consider viewing achieving HCD certification as a minimum objective. More importantly, beyond certification, FFE strives to ensure that Fremont's next Housing Element is a practical directive that can be implemented in achieving our Regional House Needs Allocation (RHNA), especially for our chronically underserved lower income residents in fulfilling what City itself in its Draft Housing Elements

affirms is its “continued commitment to increasing the supply of affordable housing...that is affordable for teachers, public safety personnel, nurses, and child care workers ...seniors, peoples with disabilities, and others with limited mobility and fixed income.” (Draft Housing Element, pp. 1-1-1-2.) In short, what FFE calls for, a “home for everyone.”

Our analysis is a data-driven and evidence-based review of the Draft Housing Element in its current iteration before submission to the HCD and the close of public comments on Monday August 8, 2022. Our review examines proposed policies and programs in Chapter 2 and the sites inventory in Chapter 8 of the Draft Housing Element.

Overview

- We want the non-vacant site analysis to use a numeric probability of development based on past data.
- We would like to, and have suggested some improvements on policies concerning increased walkability, increased affordability, tenants rights, and unhoused concerns.

Policies and Programs

We have analyzed the listed policies and programs in chapter two, and offer our suggestions here. We also suggest additional policies and programs which are not listed in chapter two, though we nevertheless believe would be a great benefit to the City of Fremont.

Analysis of, and suggestions concerning policies and programs listed in chapter two

- 8.1 • **Program 1:** Proactively enforce anti-substandard housing provisions, by not fully relying on tenant complaints, as this can protect tenants from retaliation
- 8.2 • **Program 2:** Host an annual training for tenants about their legal rights
- 8.3 • **Program 5:** Where feasible, work to increase walkability and quality of life in the areas described, as well as throughout the city, by allowing gentle mixed use zoning (ie. Neighborhood corner stores), and investing in wider sidewalks, more tree cover, safe bike infrastructure, and pedestrians infrastructure such as modal filters
- 8.4 • **Program 6:** Require that a minimum percentage of the Capital Improvements Program (CIP) budget be allocated to non-car infrastructure
- 8.5 • **Program 7:** Implement TOPA (Tenant Opportunity to Purchase) and good cause eviction for mobile homes
- 8.6 • **Program 8:** Levy a tax on condominium conversions
- 8.6 • **Program 12:** Proactively enforce provisions requiring landlords to notify tenants of the rent review ordinance
- 8.7 • **Program 12:** Define an explicit right for tenants and landlords to have their rent review hearing at a time when they do not need to work
- 8.7 • **Program 12:** Levy fines, or more severe consequences, for landlords who retaliate against tenants for participating in the rent review process
- 8.7 • **Program 12:** Create an easily accessible, searchable rental registry database which includes information about the owners of all rental properties in Fremont, and information about the amount how much rent is, and was, being paid for each rental unit. Tenants

8.7

should be able to access background-check-style information about landlords, in a way that respects the landlords' personal privacy but reveals relevant information about how the landlord treats tenants (such as compliance with habitability regulations, rate of no-cause evictions, etc).

- **Program 12:** Implement TOPA, good cause eviction, and rent control on all units allowed by state law

8.8

- **Program 14:** Fund a free eviction defense attorney program for all Fremont tenants facing eviction, [such as the successful program](#) in New York City

8.9

- **Program 15:** Expand this program to greater than 10 families per year
- **Program 16:** Implement a right to return for all displaced tenants, and ensure that temporarily displaced tenants have appropriate housing during the time they are displaced. Tenant displacement protections should apply for a broad set of displacement causes including Red Tagging (condemning the building) and/or rebuilding.

8.10

- **Program 24:** We applaud the city's plan to make ADU permitting quicker & easier for homeowners, and encourage inclusion of duplexes now legal through SB 9.

8.11

- **Program 25:** During the Open House, staff emphasized that the City has cut City impact fees by 50% for affordable housing. The City is credited for doing so, but can more be done to eliminate or further reduce City impact fees for affordable housing? In addition, obtain City Council authorization to work with the School District, including the City-FUSD School District liaison committee to have the School District reduce or eliminate school impact fees on new affordable housing perhaps sunsetted when the District is no longer experiencing declining enrollments. Introduce as part of the State legislative agenda, encouraging our local legislators to introduce a Bill to offset any shortfalls due to reductions in school impact fees for affordable housing production.

8.12

- **Program 33:** We are excited to see this proposal to expand housing opportunities in some of Fremont's most centrally located & resource rich neighborhoods. In light of their analysis showing that these neighborhoods have historically not provided affordable housing opportunities, we ask the city to commit to this important step toward Affirmatively Furthering Fair Housing, and look forward to working to make it a success.

8.13

- **Program 34:** Eliminate parking minimums, or implement parking maximums citywide, while at the same time increasing prioritization for sustainable non-car modes of transportation

8.14

- **Program 35:** Set a city-wide general density floor / minimum density outside of mixed-use and non TOD commercial zones, while raising it in TOD areas

8.15

- **Program 35:** Study the effects of removing the maximum density stipulations found in Fremont's general plan. Currently, many of Fremont's R-3 zoning districts allow lower density than is possible in R-1 districts through SB 9, and these densities are also too low to adequately accommodate housing affordable to lower income residents.

8.16

- **Program 37:** We should go beyond the minimums prescribed in SB 478 and consider much stronger FAR updates, for example, eliminate maximum FAR for Commercial-Town-Center and Commercial-Mixed-Use. FAR is among the constraints identified in table 5-3, and the 1.25 and 0.3 FARs for those two example land use types are unnecessarily restrictive. Additionally, remove or greatly raise the FAR for all land use types.

- 8.17 • **Program 44:** In addition to State mandated “by right” development under SB 35 and AB 1387, initiate an update to the Code to encourage more ministerial review of projects for housing. We recommend the following types of projects be subject to ministerial review: subsidized housing (which is already likely to be ministerial and by right), higher density and affordable by design (whether it is in an existing TOD or not), apartments (which are very likely higher density affordable by design) which are now subject to AB 1842 rent cap stabilization over time. Alternatively, use the Downtown Plan adopted in 2012, and the code updates thereunder, to create a modified Zoning Administrator review of these new types of projects mentioned above. The current policy of allowing ministerial review for single-family homes less than 7,500 square feet but requiring public hearings for multi-family homes puts multi-family housing at a disadvantage, and we should level the playing field.
- 8.18 • **Program 46:** Adopt objective, evidence-based standards which make it such that private green space, or other public benefits developers provide are likely to be used
- 8.19 • **Program 47:** In addition to the use of boomerang funds rather than merely funding the housing trust fund with NOFAs (Notice of Funding Availabilities) for nonprofit and for profit affordable housing developers, explore creating a publicly funded social housing program to anticipate or in the absence of State law if Section 34 of the California Constitution is repealed or that does not otherwise violate Article 34. This is consistent with City Policy 3.04 Intensify Residential Development within Urban Neighborhoods, Policy 4.02 Maximize Financial Resources Available for Affordable Housing and Program 35, with attendant code updates. It should also be noted that properly funded social housing has been a massive success in places such as [Vienna, Austria](#).
- 8.20 • **Program 50:** Study the impact of further reducing these fees for 100% affordable projects, if these affordable housing projects are deed restricted longer than 55 years
- 8.21 • **Program 51:** Implement processes to routinely and objectively check whether ADUs and other such non-deed restricted units counted towards VLI, LI, or MOD income levels, actually remain affordable at those income levels
- 8.22 • **Program 52 / 53:** In light of Fremont not being allocated Project Homekey funds for the Motel 6 Project, implement new policies concerning applications for state funding which proactively address any actionable reasons for which Fremont was denied funding previously, and reasons which it’s foreseeable Fremont could be denied funding in the future
- 8.23 • **Program 58:** Audit affordable housing providers (including but not limited to property managers, owners, and support staff) to ensure they are not, intentionally or unintentionally, acting abusively towards or discriminating against tenants, as these tenants are uniquely vulnerable. Additionally audits of this type on all landlords and property managers (not just those who are involved with affordable housing) would promote equity.
- 8.24 • **Program 60:** When creating new, or updating existing, projects for the unhoused, (safe parking, HNCs) ensure that families are permitted and supported with appropriate services
- **Program 60:** Pursue the development of additional HNCs (including ones that allow for families), and safe parking, which allows RVs and families, on public property

- 8.25 ● ● **Program 63:** Build a dense, walkable, affordable, and mixed-use area on the Fremont BART parking lot
- 8.26 ● ● **Program 64:** Churches can be excellent sites for Affordable Housing development, provided the congregation is interested. However, technical assistance will be insufficient if the sites are not also adequately zoned & subject to an approval process that shelters the development & congregation from NIMBY opposition. We have already seen one case of a church seeking to provide transitional housing on their land that was derailed by local NIMBYism.
- 8.27 ● ● **Program 72:** Implement methods to proactively ask unhoused residents what they need, and accurately document their responses
- ● **Program 72:** Provide dumpsters, portapotties, and trash collection services to areas where many unhoused residents are congregated
- ● **Program 72:** Officially allow congregations of unhoused people to stay where they are at, to prevent the possibility of sweeps

Additional policies and programs not listed in chapter two

- 8.28 ● ● When Fremont specific data is released from the [2022 PIT \(Point in Time\) count](#), be committed to implementing policies which address the root causes of homelessness, with specific emphasis on the prevention section of the survey data
- 8.29 ● ● Work with [Urban3](#) to develop an understanding of which types of development are solvent and fiscally responsible long-term in Fremont
- 8.30 ● ● Implement empirical standards, based upon previous localized trends, while taking into account new policy changes, to measure whether sites in the sites inventory are likely to have housing built on them in the next eight years. Then, only include sites in the sites inventory which are likely to have housing built on them in the next eight years.
- 8.31 ● ● When general plan amendments or changes to the zoning code are made, require an analysis of whether those changes would increase or decrease car dependency (based upon density, mixed-use nature, proximity to businesses, building requirements etc). If the most car dependent types of development allowed in the zones would increase car dependency, require changes to building requirements to mitigate that impact.
- 8.32 ● ● Proactively study which parts of the existing zoning code and other building requirements contribute the most to car dependency, and update them such that car dependency is reduced
- 8.33 ● ● Require a minimum number of electric car charging stations at multi-family rented buildings
- 8.34 ● ● Ban rental application fees (including credit check fees) ideally for all units, though at the very least for affordable units
- ● Implement permanent emergency rental assistance and assistance paying move-in fees, such as [programs in neighboring cities](#)
- 8.35 ● ● Explains the TOD areas to have a radius of 1 mile
- 8.36 ● ● Require bike lanes near all high schools
- 8.37 ● ● Retroactively increase requirements for safe bicycle parking, throughout Fremont

8.44

assumptions. In short, the projections set forth in Tables 8-4 and 8-5 we fear will not match actual production of low-income housing in the next 2023-2031 planning period.

In particular, especially in light of the heightened HCD review, FFE is concerned that what the City considers are “pipeline developments” without further explanation or verifiable evidence, the City’s Draft Element as currently written will not fulfill HCD’s requirement under HCD’s guidelines.

Nearly half of the sites to meet RHNA projections for the next cycle fall into the category of “Pending, Approved or Permitted Development.” (See Table 8-3.) Sadly, for the sites in Tables 8-4 and 8-5 with the greatest immediate potential for meeting RHNA targets, only 1,382 units, or less than 25% of the RHNA combined 5,736 VLI and LI units are identified as “affordable to lower-income households.” [page 8-3, Tables 8-4, 8-5; cf Table 8-1.) That means that more than 75% of the units “affordable to lower-income households” will of necessity come from ADUs, Vacant and Non-Vacant Underutilized Sites which will be subject to further review and analysis by the FFE Policy Committee. (p. 8-3 and Tables 8-4, 8-5.) The Draft Housing Element on p 8-10 under Notes (1) the City states that 60% of inventoried ADUs in the “pipeline” for lower-income housing.

8.45

And while in general terms, the City is able under HCD Guidelines to identify and to credit towards its RHNA assessment, the following categories in the pipeline which are set forth, as follows:

- “Under Review”; e.g., Table-8-4, 514 Acoma Way;
- “Approved” e.g., Table 8-4, 4667 Cerritos Avenue and Table 8-5, Mahmush Condominiums;
- “Pre-Application Review”; e.g., Table 8-5, Mission Homes 38765 Mission Blvd.; and
- “Entitlement Review”; e.g., Table 8-5, Fremont Hub Mixed Use, 39150 Argonaut Way.

An HCD Guideline, in relevant part, states, as follows: “For projects, yet to receive their certificate of occupancy or final building permit, the element must demonstrate that the project is expected to be built within the planning period.”

The City undoubtedly can make a good argument that if final building permits and certificate of occupancies are issued for all projects that are “Under Review,” “Approved,” or subject to “Pre-Application Review” and “Entitlement Review,” the units will be built within the 2023-2031 planning period. And the City does not appear to be stuffing projects without any pending application under the heading “Pending, Approved or Permitted Development” to inflate the number of units that the City is crediting towards its RHNA Allocation.

The City though makes an implicit assumption, that is not made explicit or a matter of further detailed discussion in the Draft Housing Element, namely, that all such projects will be approved in the first instance, or even if approved, will actually be built by the end of the 2023-2031

planning period. Without supporting historical documentation for projects in past RHNA Cycles for the sub-categories “Under Review,” “Approved,” “Pre-Application Review” and “Entitlement Review,” HCD may demand further explanation. Either the City does not have such historical data in the manner it is now inventorying sites in Tables 8-4 or 8-5, or a more searching inquiry would net a percentage less than 100% that should be applied to the number of units for all categories except “building Permit Issued” in Tables 8-4 and 8-5.

8.45

At the Open House, planners expressed confidence that any project that they have categorized as “in the pipeline” is fairly certain will be built in the next planning period and will fulfill Fremont’s RHNA Allocation. FFE suggests that the Housing Element affirmatively sets forth data-driven and evidence-based reasons, such as historical projections realized during the current or past planning periods, to justify its projections. To the extent the City is deviating from past metrics whether mandated by new State law or otherwise from past planning periods, provide a supporting rationale which these new metrics are predictive in netting achievable results over the next 8 years.

To be clear, we should be seen as an ally in offering support to the City in its efforts to obtain HCD certification. FFE’s advocacy, however, is not merely limited to ensuring that the City obtains HCD certification. We are more concerned that Fremont meets its RHNA Allocation with realistic evidence-based assumptions for all types of housing; and to do so, in particular, for lower-income housing.

The historical data shows that the existing General Plan, zoning, and consequent market conditions have enabled the City in the past to meet or exceed its RHNA assessments only for above moderate-income housing.

But where less than just 25% of the City’s RHNA Allocation for lower income unit in the 2023-2031 planning period are coming from “Pending, Approved or Permitted Development,” we all need to make sure we getting this Draft Housing Element right with projections that are not based on optimistic assumptions that 100% of the units identified in Tables 8-4 and 8-5 will in fact house the underhoused and those otherwise experiencing homelessness in our community for in the next eight years of the 2023-2031 planning period.

8.46

We are further concerned that the Non-Vacant Sites Analysis Methodology is not quantitative enough. It provides examples of sites that have been redeveloped in the past, but it does not estimate the proportion of sites in the site list that are expected to be redeveloped in this cycle. Realistically, it will not be 100%. Ideally, a numerical likelihood of development factor should be calculated based on the percentage of past sites that got developed in previous cycles. The total number of units provided by the inventory should be high enough that we meet or exceed the RHNA numbers after multiplying by the likelihood of development.

While we at FFE have not at this time conducted a full analysis of which sites were developed from past housing elements, we note that there are 3685 units listed in table 8-16 where it is indicated that AB 1397 applies, meaning that these sites have been listed in previous housing

8.46

elements. This value, if we assume that most of these units were included in the most recent housing element (and please correct us if that's a false assumption) represents 61% of the 6084 RHNA total from the 2015-2023 cycle, a very significant percentage. This strongly suggests that many of the units will not actually be built this cycle, and so the expected number of units delivered should be scaled down accordingly.

Other Items

8.47

On a lighter note, we'd like to request that the page number be absolute numbers (for example, running from 1 to 430). It's difficult to use the table of contents to find the start of the chapter when all it says is that it begins on [chapter_number]-1.

Respectfully,

The Fremont For Everyone Policy Committee

Public comment - Hamza Shaikh

Hamza Shaikh <rewazzu@gmail.com>

Sun 7/24/2022 4:43 PM

To: housingelement <housingelement@fremont.gov>

9.1

Hello I am Hamza Shaikh a 29 year old who has been living in Fremont his whole life. Our city needs to focus more on dense mixed used zoning and we need to reduce suburban sprawl. We need proper infrastructure so that we can bike or walk to the grocery store and to public transportation from where we live. This infrastructure needs to be low-stress. We need people oriented infrastructure.

9.2

Pacific Commons is an example of car oriented development that we need to move away from. The stores are nice there but you literally can't go from one store to another without driving or risking walking across a high traffic street. The stores should have been much closer together and parking should have been restricted to a parking structure. As is, the land dedicated to parking and the abundance of cars ruins the community vibe of the area, and likely limits the value of the area.

Thank you for reading my public comment.

Hamza Shaikh

Comment on housing element paper

Jan Quilici <janquilici@gmail.com>

Mon 8/8/2022 9:41 PM

To: housingelement <housingelement@fremont.gov>

Cc: Quilici Jan <janquilici@hotmail.com>

I am very happy that the city is doing something about our homeless problem and I support this project. My concern, however, is that without specific guidelines, front yard trees will be removed without considering other options first. Also I am concerned that the remainder of the front yard can be concreted over, creating urban decay and heat island effects.

10.1

The City has declared itself a tree friendly community and has done much to plant trees throughout the city. However, when reading the plan for this housing, it seems that no one cares any longer about trees and their benefits. Surely, this project can be done with care taken so that we don't end up with a treeless City that is also paved over with concrete.

Please take my comments into account as you finalize the draft.

Janet M Quilici
36910 Montecito Dr
Fremont, CA 94536
510 791-2341

August 4, 2022

Planning Division
City of Fremont
3300 Capitol Avenue
Fremont, CA 94538

Re: Comment to Draft 2023-2031 Housing Element

Dear Planning Division Staff,

I am the owner of two (2) properties in Fremont, 44960 Lopes Road, Fremont (APN 519-1310-49) and 44960 Warm Springs Boulevard, Fremont (APN 519-1310-34-15). Both sites are less than a ¼ mile of the Warm Springs BART station, in fact they are the closest privately owner properties to the Warm Springs BART station. Both properties are located within the City's Transit Oriented Development (TOD) Overlay and are also included in the City's Warm Springs Innovation District Transit Priority Development Area.

Numerous Goals and Policies in the City's General Plan encourage high density residential or mixed-use projects in TOD areas. Specifically, Policy 2-3.8 states the following:

"Generally locate new higher density housing in Priority Development Areas and the TOD Overlay where there is good access to transit, proximity to local-serving commercial uses, and proximity to collector or arterial streets. Conversely, the City should discourage the use of developable sites with these attributes for new low employee intensity or low value land uses."

Given that both these sites offer the opportunity to create dense, vibrant transit-oriented neighborhoods it would seem that their inclusion in the Housing Element Update would be a logical choice to achieve the growth anticipated in Fremont over the next planning cycle.

Thank you,



Joseph Depaoli, Trustee of the James W. Lopes 2019 Living Trust
2415 San Ramon Valley Blvd, Suite 4-411
San Ramon, CA 94583
Cell: 925-708-8863
Email: joedepaoli@gmail.com

Housing Element Draft

kelawn02@aol.com <kelawn02@aol.com>

Tue 8/9/2022 6:22 AM

To: housingelement <housingelement@fremont.gov>

Dear City of Fremont,

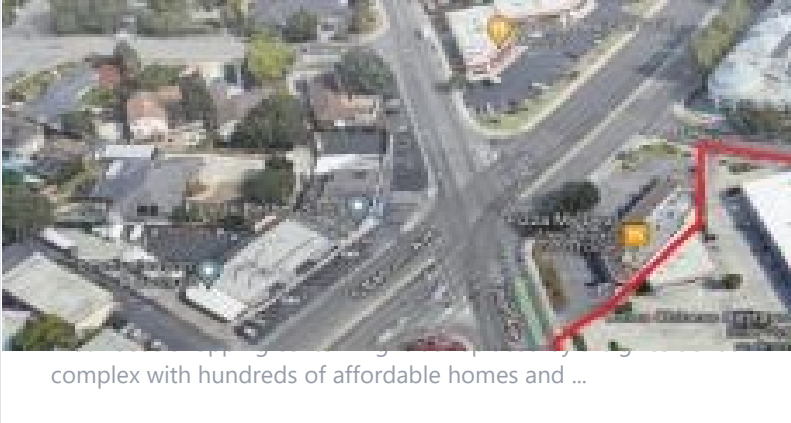
12.1 | Please consider trees in the Housing Element Draft. Trees throughout the city must be protected. We cannot lose our green canopy to overcrowded housing. Cutting down trees will decrease the quality of the environment for everyone.

Kate Chouta.

Wayland Li

From: Kelly <abrfar-eb@yahoo.com>
Sent: Wednesday, July 20, 2022 3:23 PM
To: Dan Schoenholz; Wayland Li; Joel Pullen; Robert Daulton
Cc: Raj Salwan; Teresa Cox; Jenny Kassan
Subject: Under-performing retail sites could convert to affordable housing — many such sites in MSJ, Centerville

[Hundreds of affordable homes could replace southwest San Jose shopping center](#)



By George Avalos
July 20, 2022 at 5:30 a.m. | UPDATED: July 20, 2022 at 1:05 p.m.
<https://www.mercurynews.com/2022/07/20/affordable-home-replace-san-jose-shopping-center-real-estate-develop/>

SAN JOSE — A big residential complex with hundreds of affordable homes and some retail might replace a San Jose shopping center, plans being floated at city hall show.

An estimated 280 homes would be developed on the site of a shopping center at the corner of Union Avenue and South Bascom Avenue in southwest San Jose, according to a very preliminary proposal filed with San Jose planners.

The residences being eyed at the proposed development would be “100% affordable,” the planning documents show.

The building would be six stories high, including the ground-floor retail, ground-floor parking and five levels of residences.

The site currently features a retail center called Maplewood Plaza, which is occupied by numerous shops and restaurants.

“The Maplewood Plaza development proposal follows a pattern of under-performing retail sites converting to affordable housing,” said Bob Staedler, principal executive with Silicon Valley Synergy, a land-use consultancy.

The existing retail on the site where the development would occur totals 23,800 square feet, the project plans show.

Among the merchants whose locations might be bulldozed for the proposed development: Gyro’s Burgers & More, Harbor Fish & Chips, Anwar Bazaar & Bakery, Union Chinese Restaurant, Maya’s Cafe, Diamond Shoe Repair, Song’s Kung Fu, Lush Spaw and Vogue Salon & Lounge.

Along with the 280 homes, the proposal envisions the development of 11,900 square feet of new retail spaces.

The new retail would occupy part of the ground floor and be located primarily along Union Avenue.

San Francisco-based Maracor Development is listed as the applicant seeking city approval for the affordable homes project.

The development proposal is in a very preliminary stage and was submitted to obtain feedback from city officials. The ultimate plans could be considerably different from what is on file at present.

Maracor has proposed several projects in the Bay Area, including some in San Jose, along with others in San Francisco, Oakland and Fremont, according to the real estate firm's website.

The affordable homes project at the Union and Bascom avenues site would include a variety of unit sizes.

Of the 280 units, 112 would be studios, 77 would be two-bedroom units, 75 would be three-bedroom homes and 16 would be one-bedroom units, the preliminary plans state.

The proposed affordable homes development is located within approximately 1.5-2 miles of multiple light rail stops that are on the Old Ironsides-Winchester line and the Baypointe-Santa Teresa line.

"I wouldn't be surprised if similar retail sites with some level of vacancies are getting multiple unsolicited offers for redevelopment to affordable housing," Staedler said.



Alberto Quintanilla

From: Lisa Danz <lmdanz@gmail.com>
Sent: Tuesday, July 12, 2022 3:32 PM
To: citycouncil
Subject: 7/12/2022 item 5A Public Comment

Dear City Council and Staff,

Thank you for producing the updated Housing Element draft and providing the opportunity to comment. I haven't had time to read all 430 pages of it yet, so I will try to follow up with more thorough comments before the August 8 public comment deadline. In the meantime, I wanted to offer a few initial notes.

Broadly, we need more housing. A lot more housing. I would like the Housing Element to convince me and other community members that Fremont will actually produce enough housing to meet all of its RHNA numbers. I know that the city is not on the hook for funding all of the subsidized affordable housing, but there are levers to pull to make housing production substantially more likely.

Initially, here are a few specific items that I've noticed:

1. ADU quantity: adjusting over time

On page 8-14:

As a program of the Housing Element, Fremont will monitor ADU production annually and, if production trends are less than anticipated halfway through the planning period, implement measures to further facilitate their production.

I think it's wonderful that (1) we've removed constraints and ADU production is going up, and (2) we're monitoring and adjusting.

However, the language around adjusting is too vague. What specific "measures" would be put in place if the numbers fall short? It would be better to provide for an automatic adjustment. For example, if the numbers are lower than what we've planned for, we'll automatically change some particular regulation to make it easier to build ADUs.

2. Likelihood of development

(I'm still trying to understand this part, so my apologies if I've missed something.)

I didn't see an analysis of what share of the 2015-2023 cycle site inventory was actually developed. I do see the total numbers of housing built for each income level, and I could potentially try to figure this out for myself by comparing the two, but I think this analysis could be helpful to include directly in this cycle's Housing Element, to inform the likelihood that sites in the inventory will be developed.

If I understand correctly, the "adjustment factors" that are specified in table 8-10 tell us, given that a site gets developed, what percentage of the total zoned capacity gets built. But I don't see an estimate of whether it will be built in the first place.

The one place that this is addressed is for non-vacant sites, but I'm a bit confused by the analysis there as well. Rather than doing a statistical analysis of a random sample of potential sites and figuring out which get built (or surveying the owners and asking about their plans), it is simply noting the important characteristics of those sites that *did* get built. I don't see how we can deduce from that what the probability is of a random currently-in-use site will be redeveloped.

If what I think are missing analyses are actually there and I just haven't found them yet (of if there's another analysis that meets the same need), I'd be grateful if you can point me to them. Otherwise, I'll keep reading more carefully.

I'm sorry for my abbreviated analysis, this was a lot to read and the comment deadline for this meeting is fast approaching. I hope to have more to say in the future. Thank you again for the opportunity.

Regards,
Lisa Danz

Dear City Staff,

As I read through the [Housing Element Draft](#), I found some items that appeared to be errors or typos. I'm sharing them here in the hopes that this is useful to you when editing.

The following were already noted in Fremont for Everyone's letter that was submitted on July 28:

- On page 8-27, it says ""Based on an analysis of inventory sites against the criteria above, a finding can be made that existing uses on non-vacant sites will not impede residential development of those sites and have a high likelihood of discontinuing during the 2015- 2023 planning period to allow for new residential development." Shouldn't this say 2023-2031?
- Table 8-16's last page jumps from 262 to 264 in the row numbers. That's the only jump in the table; are we intentionally skipping 263?
- Site 543-256-22-4 is listed as "4178 Decoto Rd" in table 8-16 but "4175 Decoto Rd" in table 8-14.
- Site 501-1800-1-50 is listed as 41 units in table 8-16 but 43 units in table 8-14.
- Several of the numbers listed in table 8-3 do not match the sums of the numbers of units in the various site inventory tables:
 - Moderate-income vacant+nonvacant add up to 2228 in table 8-16 but are listed as $204 + 2042 = 2246$ in table 8-3 (site inventory is 16 short of 8-3's total)
 - Lower-income in-pipeline units add up to 1088 in tables 8-4 and 8-5 but are listed as 1383 in table 8-3 (site inventory is 295 short of table 8-3's value)
 - Moderate-income in-pipeline units add up to (only!) 1 in tables 8-4 and 8-5 but are listed as 84 in table 8-3 (site inventory is 83 short of table 8-3's value)
 - Above-moderate in-pipeline units add up to 4771 in tables 8-4 and 8-5 but are listed as 4668 in table 8-3 (site inventory is 103 over table 8-3's value)

The following are additional possible typos that I found as I was reading through (highlights added):

- Page 2-1: "The community's fair housing challenges, as identified in **Chapter 8**, Fair Housing Assessment."
 - Shouldn't this say Chapter 7?
- Page 2-35, Program 83: "These services, such as In-Home Assessment and Care Coordination for seniors, paratransit, the Family Resource Center (**FRD**), and SparkPoint, enable households to stay housed."
 - Should say "FRC" rather than "FRD," right?
- Page 5-8: "The land use designations where the greatest intensity of residential development is expected to occur **are** in the planning period are City Center, Town Center and Urban Residential and Mixed Use."
 - I think this word should be removed.

15.1

15.1

- Page 5-8: “Each area **includes** is intended to be pedestrian-oriented with an attractive and distinct identity, along with amenities such as small parks, public art, and plazas that creates a Main Street ambiance.”
 - I think this word should be removed.
- Page 5-13: “As a program in the Housing Element, the City will **development** technical guidance and a local ordinance to implement the requirements of SB 9 and to create objective **standards will** provide greater certainty to property owners considering developing their property under SB 9.”
 - I think “development” should be “develop.”
 - I think the word “that” should be inserted between “standards” and “will.”
- Page 5-18: “Safe parking sites **are location that provides** homeless individuals and/or families living in a vehicle a dedicated, safe place to park.”
 - The highlighted section should be something like “are locations that provide.”
- Page 5-26: “Fremont’s mixed use regulations (FMC Section 18.45.040) do not provide specificity regarding which street frontages require a commercial component in **certai n** situations, such as when a development site is a through lot, or has street frontages on all sides.”
 - There’s an extra space in the middle of the word “certain.”
- Page 5-26: “Small Lot Design Guidelines (small-lot single-family residential)”
 - Missing the closing “)”
- Page 5-34, in table 5-13: “fraction thereof above **\$100,00** valuation”
 - Should this be \$100,000?

Thank you for all your hard work on the Housing Element. This is an exciting opportunity for us to try to make progress on fixing the housing crisis.

Regards,
Lisa Danz

On Aug 1, 2022, at 5:24 PM, Lynn Miller <20tufa20@gmail.com> wrote:

Dear Director Schoenholz,

For several weeks I have wanted to speak to someone about this draft. Wayland and I had an appointment which he forgot about and he has not responded to my queries about another. As time to comment closes soon, I am more anxious to share my concerns with you directly.

After reading through the draft, I found no mention of preservation of trees on property under developmental processes. "Conservation policies" 7-9.1 and 7-9.2 emphasize green building and energy efficiency, but not green "infrastructure" from trees. Currently, there are ordinances regarding removal of mature trees from front or back yard properties. Will these ordinances prioritize tree protection over housing design?

16.1

Housing Element Policy 3.01 "encourages" development of regulations that promote a balance between sustainability goals and housing needs. That is extremely general.

There needs to be protection verbiage in the document and if the removal of mature trees occurs, there should be size per size mediation required. For instance, if a 65 year old Oak tree is in the yard, plans should be directed toward a design so as to avoid its removal. If a tree is removed- mediation cost would be obtained to go into the urban forest budget so that equivalent multiple smaller (15 gallon) trees would be planted in the city. We have a beautiful 67 year old Deodar Cedar street tree. Our neighbor is currently seeking to build an ADU out front next to our tree. If foundation concrete and digging kill the tree's roots, there is a problem. Specific protection language needs to be apparent early in the development process to save time, money, and the tree.

Housing Element Draft 22 -"Coordinate development review with outside agencies"

16.2

There has, it seems, not been coordination within Fremont's departments! Your department, Community Development, is tasked with this project, but, it seems, there has been no integration of the Community Services Department's Tree division? This seems short sighted and unfortunate because integration of the Urban Forest Plan and CAP 2.0 makes sense and supports tree protections. Both call for more green infrastructure and, as the Housing Element states, parks and green space is the primary desire of citizens.

To back up the Housing Elements, what should be, obvious mandate to protect trees above construction pressure, is Governor Newsom's 2020 Executive Order N-82-20.

Among other climate emergency measures, it orders that our urban green spaces be protected and accelerated. It states- Climate resilience is a priority and outdoor access to green spaces is equitable.

16.3

I believe Program 51 is unnecessary. It calls for a Waiver of development impact fees, especially for ADUs. Having an extended payment plan is a good incentive, but to not collect taxes on newly built units supports the wealthy and is short sighted. Tax money is badly needed to support the greening of urban areas that are vital to the community living in dense urban settings that this Housing Element encourages broadly.

I appreciate the complexity and size of the Housing Element Draft. Many times, in the draft, it specified that the community's values, concerns, and priorities be included. Surveys from Parks and Recreation Plan, Climate Action Plan, and the Urban Forestry Plan demonstrate high value on our city trees and the desire to protect and grow our urban canopy.

Thank you for your consideration,

Lynn Miller, Board Member of Tri City Ecology Center

Lynn Miller

20tufa20@gmail.com

510-604-8206

tufatrees.org

Tuesday - Thursday

Re: Housing for Senior Citizens

Mervin Roy <mrin4040@gmail.com>

Mon 7/11/2022 11:06 PM

To: housingelement <housingelement@fremont.gov>

Sir,

17.1

I have an earnest request to have more senior housing complexes in fremont and at rates starting from \$300/. At the moment the system is to have lottery and pay \$1200 per month is out of question at least for seniors.. With multiple senior housing the rent could be as stated above and no need for a

17.2

lottery system. We have to do away with the century old system of a lottery system. Further these housing would be close to Bart, shopping malls as well as downtown. I am confident of this set up in the very near future.

Need some mention on trees/greenage

Paul Nissler <pnissler@yahoo.com>

Tue 8/9/2022 4:20 AM

To: housingelement <housingelement@fremont.gov>

Dear Fremont Committee;

18.1 Please include some mention of trees and greengage in this draft. I generally agree with much of draft, but see no concern for protecting and maintaining trees and/greenage. Taking climate change and it's affects on us more serious and working solutions concretely into policy is of utmost concern.

I thank you in advance for working to include this in next draft.

sincerely

Paul Nissler, Ph.D.

Fremont resident

Von meinem iPhone gesendet

19.1

I support the recognition for two critical environmental goals. 1) For each Accessory Dwelling Unit. build a fee should be charged that will go towards better, safer transportation in Fremont that does not bow to the overuse of automobiles and VMT. 2) ...

Richard Godfrey <richgodfrey77@gmail.com>

Sat 8/6/2022 10:32 PM

To: housingelement <housingelement@fremont.gov>

My Comments on "Housing Element Draft"

Bob Thomas <bobthomas705@gmail.com>

Mon 8/8/2022 10:52 AM

To: housingelement <housingelement@fremont.gov>

My comments on "Housing Element Draft"

I agree that additional affordable-housing needs to be built in Fremont & ADU's are one way to do this. I also think that expensive & time-consuming individual-environmental-studies are not appropriate for small projects. However, environmental considerations do matter when individual projects add up & affect the livability of the entire community.

For example, one important metric of livability is Urban Tree Canopy (UTC) cover percentage.

According to the 2020 Fremont UTC Assessment

([fremont.gov/home/showpublisheddocument/1061/637751511027500000](https://www.fremont.gov/home/showpublisheddocument/1061/637751511027500000)), Fremont UTC is 14.4% compared to a range of 37% to 18% for Palo Alto, Oakland, Cupertino, Alameda, Campbell, and Mountain View (page 7).

To protect & improve Fremont's UTC, this Assessment recommends: 1) protect most existing trees in Fremont, 2) plant new trees on an ongoing basis to replace trees that die from any cause, 3) plant additional trees to increase community canopy cover in the future for the many benefits that trees provide such as:

"improving air quality, reducing temperature, making spaces more inviting, & carbon sequestration."

"Planting trees near impervious surfaces can offset the urban heat island effect, stormwater runoff and energy consumption. Plantable space in the right-of-way in many cases is near to high concentrations of impervious surfaces. ... The priority planting analysis should be used to identify planting opportunities in areas with high concentrations of impervious surfaces..."

Building new housing means adding to the current 67% impervious surfaces in Fremont (page 2) which by itself degrades community livability. This means that mitigation using new trees is essential to offset new development as well as to help make up for current low-densities of trees in some communities.

Please add text to "Housing Element Draft" to protect existing trees as much as practical and to require planting and caring for more than just replacement trees (as space allows in each project).

Each project proposal should include a map of 1) existing trees and impervious surfaces, 2) trees proposed to be removed, and 3) proposed sites for new trees with tree species selected from an approved list.

A reference to "[fremont.gov/permits/tree-permit](https://www.fremont.gov/permits/tree-permit)" should be included to provide information related to requirements for protecting & planting street trees in Fremont.

A reference to Municipal Code on "Tree Preservation"

([codepublishing.com/CA/Fremont/#!/Fremont18/Fremont18215.html#18.215.050](https://www.codepublishing.com/CA/Fremont/#!/Fremont18/Fremont18215.html#18.215.050)) should be included to provide info on protecting existing trees in Fremont.

Sincerely,
Robert Thomas

Save Fremont's Trees

Steve Elman <steveelman2th@gmail.com>

Mon 8/8/2022 6:13 AM

To: housingelement <housingelement@fremont.gov>

Steven Elman
41461 Timber Creek Terrace
Fremont, CA 94539

21.1

While I agree that Fremont needs to create more housing, it should not be done at the expense of our existing trees. All existing trees need to be fully protected as stated in our tree ordinances. Trees provide multiple benefits to our environment, which sorely needs help to mitigate the effects of climate change. We must assure that any new ordinances or plans provide safeguards to prevent tree removal and to prevent replacement of green space with concrete. Failure to provide these protections of trees and green surfaces would result in the creation of "heat island effects" and would contribute to the damaging effects of climate change.

Please assure the absolute protection of our trees.

Comment, Housing Element

Tara Gill <taranoella@gmail.com>

Mon 8/8/2022 6:50 PM

To: housingelement <housingelement@fremont.gov>

Hello,

I was happy to hear that Fremont will be allowing additional ADU's for property owners. I hope this measure will help meet the housing needs of our growing population. One item of concern with this draft is that there is no mention of how street trees will be protected. I am concerned that without addressing the issue, many trees will be removed and that lots that are supposed to have a tree but do not, will not be required to plant one.

Many of our recent reports such as the Climate Action Plan, Parks Plan, and Urban Forest Master Plan call for much more green infrastructure, and I would hate to see us lose more tree canopy because we did not take the time to seize the opportunity to follow our own recommendations.

Thank you, and I hope that this communication will influence you to introduce some language in the draft that will uphold our tree ordinances.

Sincerely,

Tara Gill
2925 Barrington Terrace, Fremont, CA 94536

22.1

Draft Housing Element

Timothy Gavin <Tim@gavin-law.com>

Sun 8/7/2022 11:33 PM

To: housingelement <housingelement@fremont.gov>

- 23.1 ● I would like to see more aesthetic considerations in the location and setbacks of ADU's. Moreover,
- 23.2 ● some maintenance of the existing trees should be part of the plan. Good luck with your project. Tim Gavin, Fremont resident.

Tim GAvin

510.676.7060

Get [Outlook for iOS](#)

Save Fremont's trees

Tom Holt <tomholt52@gmail.com>

Mon 8/8/2022 6:17 AM

To: housingelement <housingelement@fremont.gov>

Although Fremont needs more housing, existing trees should be saved as a priority, as well. New plans and ordinances should include protections for trees. Thank you very much!

Thomas Holt
Fremont resident

24.1



August 3, 2022

Planning Department and City Council
City of Fremont
39550 Liberty Street
Fremont, CA 94538

Re: Draft Housing Element Needs Robust and Specific Parking Reforms

Dear Fremont Planning Department and Fremont City Council,

TransForm is a regional non-profit focused on creating connected and healthy communities that can meet climate goals, reduce traffic, and include housing affordable to everyone. We applaud Fremont's work to date on the Draft Housing Element. However, to meet housing, transportation, and climate goals, Fremont needs to expand on its successful programs and initiate some new ones.

In particular, there will need to be an effective mix of:

- Reducing the amount of parking mandated for housing and providing incentives and programs to drive less (Transportation Demand Management or TDM)
- Developing sufficient programs to meet affordable home targets of RHNA

25.1 We appreciate Program 34 which will further reduce parking requirements and study the feasibility of eliminating residential parking minimums. However this program lacks specifics on how much Fremont plans to reduce parking in the TOD zone, or a commitment to implementing other parking reforms like those listed above. It is clear that Fremont understands the constraint to development parking poses, however lacks a clear and specific plan to implement reform.

25.2 The need to eliminate or greatly reduce parking minimums is more important than ever. **Each new parking space costs \$30,000-\$80,000.**¹ With inflation driving up construction costs since these estimates, two spaces may now cost up to \$200,000. Beyond construction costs, parking takes up essential space that could provide more homes, services, or community amenities.

TransForm recommends that Fremont consider the following policies in the Housing Element:

1. Funding a more robust study of parking reforms, particularly how smart parking policies (in addition to eliminating minimums) could positively impact housing, transportation and other goals.

¹ <https://www.shoupdogg.com/wp-content/uploads/sites/10/2016/05/Cutting-the-Cost-of-Parking-Requirements.pdf>

2. Requiring unbundled parking for certain transit oriented developments. This is easier for building managers to implement now with new parking tech tools like [Parkade](#).
3. Implementing TDMs such as requiring developers to buy annual bus passes for residents at a discounted bulk rate.

To show the tremendous transportation and climate benefits of these policies, as well as some of the financial savings for residents and reduced costs for development, we have used our GreenTRIP Connect tool to [create scenarios](#) for a potential future development site at **39160 Paseo Padre Parkway** located in the TOD zone. This site is identified in Fremont’s draft Housing Element Site Inventory as a potential future opportunity site for this RHNA cycle, currently the Gateway Plaza. The California Office of Planning and Research recommends GreenTRIP Connect as a tool to use while developing General Plans and is especially useful during the development of Housing Elements (the tool is free to use and supports better planning at the site and city-wide level).

25.2

By implementing the strategies above at **39160 Paseo Padre Parkway**, GreenTRIP Connect predicts:

1. Implementing unbundling and providing transit passes at this site would decrease demand for parking by 36% and result in resident transportation savings of \$1,008 per year.
2. With right-sized parking, incorporating the benefits of unbundled parking and free transit passes, the development would cost \$3,225,000 less to build relative to current parking standards.
3. When combined with 100% affordable housing these strategies resulted in an incredible 62% reduction in driving and greenhouse gas emissions for the site, compared to the county average.
4. If an affordable development with smart parking strategies were built on this site each household would drive 7,165 less miles per year creating a greener and safer community.

Through eliminating the high costs of parking, homes can be offered at more affordable prices, reducing the number of community members that face extreme housing cost burdens, getting priced out of their community, and/or becoming unsheltered. Residents, new and old alike, will greatly benefit from the reduction in vehicle traffic and associated air pollution (see scenarios [here](#)).

In addition to parking and transportation strategies, we applaud some of the proposed strategies to support more affordable homes, since these would have such tremendous benefits as noted in the GreenTRIP scenario. Two of the most important are Program 63 which will prioritize affordable housing on public property and Program 50 which allows reduced impact fees for Affordable Housing Projects. These programs are a cost-effective complement to strategies focused on housing production.

25.3

The GreenTRIP scenarios and the chart on the final page of our Scenario document also show the imperative of programs to accelerate development of affordable homes, like Programs 63 & 50. Not only do these households use transit more and drive much less than average, but success in this area can help provide homes for unsheltered individuals and families. A commitment to these programs will show that Fremont is committed to planning for all levels of the 7,732 RHNA BMR units anticipated in this cycle.

Please let me know if you have any questions. TransForm hopes this information explains why Fremont should make parking reform and affordable housing development a priority in the Housing Element update.

Sincerely,
Kendra Ma
Housing Policy Analyst
kendrama@transformca.org

Trees

Marilyn <robertsinger993@comcast.net>

Sat 8/6/2022 10:36 PM

To: housingelement <housingelement@fremont.gov>

26.1

Please be sure that adu projects are done without tree removal- or require replacement if trees need to be removed. Use water permeable hard scape to eliminate runoff. Landscaping will be important to blend the additional units into the neighborhoods. Thank you. Marilyn Singer

Sent from my iPhone

Removing trees to install ADUs

bonnie lee kellogg <bonnieleekellogg@gmail.com>

Sun 8/7/2022 5:02 AM

To: housingelement <housingelement@fremont.gov>

Fremont has always been a beautiful city and one of the reason has been our strict tree ordinances.

I am greatly GREATLY concerned that your proposed ADU policy will allow the indiscriminate removal of valuable trees from our city.

Especially now with global warming, TREES are one of our best heat mitigators. If residents are allowed to remove trees from our yards and replace them with cement we will be creating a sweltering concrete jungle

Please ensure that no trees can be removed and that appropriate landscaping is required, especially in front of homes.

Thank you.

bonnie kellogg
5104 troy avenue
fremont, ca. 94536
510-760-7207

27.1

Housing Element Open House

Carol Schneider <cahagros@gmail.com>

Sun 8/7/2022 11:34 PM

To: housingelement <housingelement@fremont.gov>

Hello City of Fremont,

28.1

When you write the document on ADC housing, I hope it includes language that also protects trees.

There is no urgency to finish this document. It should also include the usual fees for the development of housing.

28.2

Thank you for working on this housing problem but also considering the longer and important problem of tree cover and need.

Sincerely,

Carol Schneider

December 8, 2022

Ms. Reena Rao
Vice Chair, Planning Commission
City of Fremont
3300 Capitol Avenue
Fremont, CA 94538

RE: City of Fremont's 6th Cycle Housing Element Update (2023-2031)

Dear Ms. Rao,

As you know, the state has a well-documented housing crisis, and the State of California is requiring that our city help facilitate nearly 13,000 new housing units in Fremont during the next eight years. If we fail to adopt state approved plans and regulations, the City will be subjected to penalties and can face significant financial and legal ramifications. City staff has detailed the consequences and penalties (including the loss of local land use power and moratorium on all permits) that Fremont may face during some of the public meetings during the housing element update process. We cannot escape this requirement and must get it right.

Given the state mandate, we don't understand why the City's planning staff is designating existing offices, existing retail centers and self-storage centers in the site inventory list for the housing element update without "substantial evidence" showing that these sites can be redeveloped. Simply driving by these non-vacant sites shows many, many existing businesses and multiple tenants making it highly unlikely that any of these locations will be redeveloped into badly needed housing.

Identifying non-vacant sites on the inventory list is problematic for several reasons: i) the existing tenant leases, ii) parking and reciprocal access requirements, and iii) Covenants, Conditions and Restrictions (CC&R's) which are all impediments to redevelopment and nearly impossible to overcome. The State of California Department of Housing and Community Development ("HCD") stipulates that a City not consider non-vacant sites if the "**existing use impedes additional residential development...**" HCD notified the City of this requirement in its November 22, 2022 letter and, unfortunately, the City has not performed this analysis.

Lease Impediments to Redevelopment

Almost all of the retail centers and offices identified by staff have existing leases in place which prevent re-development of the sites. Often times, tenants have long term, multi-year leases (many with lease extension options) which prevent redevelopment and, in fact, a single tenant can prevent redevelopment of a site if the tenant does not wish to cancel their lease.

Planning staff has not provided this lease impediment analysis for the non-vacant sites. The planning staff must provide a lease analysis for *each* of the non-vacant sites to show that existing leases will not be an impediment to residential development. If the City does not undertake this analysis to show that the inventory sites listed in the draft housing element can be redeveloped, the housing element is flawed and the City is subject to penalties and, even worse, will not meet its RHNA obligation. We need to make a serious effort to provide more housing in the City and designating a bunch of occupied shopping centers and office buildings is a ridiculous shell game that will not end well with HCD.

CC&R Impediments to Redevelopment

It is common knowledge that most, if not all, retail centers have CC&R's which grant reciprocal parking rights, access rights and utility rights to the tenants as well as prevent residential uses within the centers. These CC&R's are a major impediment to redevelopment and cannot be changed easily (or at all) so residential development on non-vacant sites with CC&R's is highly unlikely. Tenants never want to make parking or access more difficult for their customers so are loath to allow changes to CC&R's which will impact the customer experience nor are these tenants required to agree to any such changes to the CC&R's. Additionally, tenants generally do not like residential uses on the property because residents often complain about noise, early morning deliveries, odors from stores and restaurants serving food, and other compatibility problems. City staff has not provided any "substantial evidence" whatsoever that any of the specific sites that they have identified in their inventory list have the ability to modify their CC&R's. Further, CC&R's are typically recorded on the title of a property so it is quite easy to see which inventory property has these restrictions, but the City has not done this which should be a part of the "substantial evidence" provided. Instead, the draft housing element has used overly broad, non-site specific arguments that some redevelopment of non-vacant sites has occurred in the past so is likely to occur in the future. Please confirm that that lease and/or CC&R impediments do not exist toward residential development at the sites you have identified. It would be relatively easy for planning staff to obtain the existing CC&R's for the identified sites to confirm whether or not there are impediments to redevelopment.

29.1

Reciprocal Parking and Access Right Impediments to Redevelopment

It is standard practice that the existing tenants in retail centers have leases guaranteeing parking and access rights so every lease within an existing center would need to be amended to allow for new residential development on portions of the center where parking and drive aisles exist. Moreover, if staff contends that parking areas will be redeveloped into housing, then the loss of parking spaces for the remaining uses will render the reduced parking remaining non-compliant with the City's parking requirements. Tenants will not give up parking or access rights under their leases because that would make the customer experience worse so they will not allow any modifications to their leases, even for a reduction in their rent. The City has not provided any substantial evidence that the non-vacant sites will be able to have the existing leases modified to accommodate residential growth. This applies to

occupied retail centers, offices, medical office buildings, self-storage locations, and other existing, non-vacant uses. The city must show that the existing leases do not pose an impediment to redevelopment. It appears that planning staff has done any such lease analysis to satisfy the HCD required “substantial evidence” standard.

Test Case – 39160 Paseo Padre Parkway (Site #118)

As a case in point, City staff should start with providing the required “substantial evidence” to show that there are no impediments to residential development for the 39160 Paseo Padre Parkway site (#118 on the inventory list) which they claim can accommodate 645 units. This would be a good test case for City planning staff to provide substantial evidence that this site may be redeveloped. It appears that planning staff has no idea of the number of leases (and the length of those leases) that must be terminated or modified for this site to be redeveloped. It seems virtually certain that 645 units will never be developed at this location because of the CC&R and lease impediments described above. If the City does not provide clear, direct, site specific “substantial evidence” for this site and all of the others listed on the inventory list, the site should not be allowed to be on the housing element inventory list nor count toward the City’s RHNA obligation.

29.1

We are in critical need of housing and there are likely more than 4,779 units listed in Exhibit A attached (by address) from the City’s inventory list that are highly unlikely to ever be built because of existing tenant leases and CC&R’s. Including a few of these existing offices or retail centers might be acceptable in limited circumstances, but the list shown in Exhibit A attached reflects more than 80 properties accounting for 4,779 units which is almost 40% of the City’s RHNA requirement of 12,897 units. It appears that there has been little to no analysis to support the development potential of the nearly 5,000 units that staff claims can be developed on the non-vacant sites.

The Planning Commission has an important meeting on the housing element update scheduled for December 22, 2022. Please recognize and consider the obvious and significant impediments to redevelopment that exist on these non-vacant inventory sites. We respectfully request that you ask the planning staff the following:

1. Please defend listing each occupied site on the proposed site inventory list
2. Please provide a lease analysis for the non-vacant sites to meet the “substantial evidence” requirement of the state and show that the existing tenant leases are not an impediment to redevelopment
3. Please confirm which of the non-vacant sites have existing CC&R’s which are likely to prevent residential redevelopment
4. If a proposed inventory site does have recorded CC&R’s, please confirm that the CC&R’s do not prohibit residential uses on the site

29.1

We need to do better to ensure more housing is constructed in Fremont. Please direct the planning staff to put forth serious and viable housing sites to meet our RHNA goals, rather than numerous occupied sites that are not likely to be redeveloped any time soon. HCD will not accept the shell game approach being taken by city planners, and it will come back to harm the City in the future especially since HCD has already identified this issue in their letter of November 22, 2022.

Thank you for your service and for helping to keep Fremont thriving.

Sincerely,

Residents for Residential Development

cc: California Department of Housing and Community Development

Exhibit A

1. 39160 Paseo Padre Parkway – 645 units
2. 39410 Fremont Blvd. – 87 units
3. 3923 Stenerson Ln. – 36 units
4. 39360 Fremont Blvd. – 41 units
5. 39390 Fremont Blvd. – 49 units
6. Mowry Ave./Hastings – 11 units
7. 39310 Fremont Blvd. – 58 units
8. 3850 Beacon Ave. – 34 units
9. 3200 Mowry Ave. – 65 units
10. 3744 Mowry Ave. – 191 units
11. 3400 Mowry Ave. – 42 units
12. 3456 Mowry Ave. – 35 units
13. 3340 Mowry Ave. – 81 units
14. 3101 Walnut Ave. – 366 units
15. 39222 Fremont Blvd. – 43 units
16. 39039 Paseo Padre Parkway – 94 units
17. 36930 Fremont Blvd. – 21 units
18. 3723 Peralta Blvd. – 37 units
19. 3769 Peralta Blvd. – 13 units
20. 3833 Peralta Blvd. - 16 units
21. 3055 Mowry Ave. – 44 units
22. 38700 Paseo Padre Parkway – 75 units
23. 38750 Paseo Padre Parkway – 76 units
24. 36580 Fremont Blvd. – 41 units
25. 36640 Fremont Blvd. – 28 units
26. Beacon Ave./Fremont Blvd. – 52 units
27. 4050 Alder Ave. – 17 units
28. 36761 Fremont Blvd. – 53 units
29. 36789 Fremont Blvd. – 68 units
30. 4075 Thornton Ave. – 19 units
31. 4045 Thornton Ave. – 15 units
32. 4088 Thornton Ave. – 17 units
33. 37063 Fremont Blvd. – 28 units
34. 37119 Fremont Blvd. – 16 units
35. 37555 Dusterberry Way – 9 units
36. 37557 Dusterberry Way – 13 units
37. 4461 Peralta Blvd. – 15 units
38. 37485 Fremont Blvd. – 16 units
39. 4100 Peralta Blvd. – 92 units
40. 38487 Fremont Blvd. – 23 units
41. 38491 Fremont Blvd. – 101 units
42. 38665 Fremont Blvd. – 18 units
43. 38619 Fremont Blvd. – 65 units
44. 585 Mowry Ave. – 94 units

45. 670 Mowry Ave. – 152 units
46. 39160 Paseo Padre Parkway – 645 units
47. 43456 Ellsworth St. – 30 units
48. 1500 Washington Blvd. – 39 units
49. 40645 Fremont Blvd. – 217 units
50. 41989 Fremont Blvd. – 62 units
51. 42151 Blacow Road – 18 units
52. 39554 Paseo Padre Parkway – 18 units
53. 42088 Osgood Road – 47 units
54. Osgood Rd./Blacow Rd. – 160 units
55. 41791 Osgood Road – 20 units
56. 41094 Fremont Blvd. – 35 units
57. 41068 Fremont Blvd. – 20 units
58. 3902 Washington Blvd. – 78 units
59. 41060 Fremont Blvd. – 36 units
60. 3906 Washington Blvd. – 12 units
61. 3741 Washington Blvd. – 15 units
62. Washington Blvd./Union St. – 15 units
63. 3824 Union St. – 31 units
64. 40984 Fremont Blvd. – 30 units
65. 40968 Fremont Blvd. – 18 units
66. 40860 Fremont Blvd. – 19 units
67. 40750 Chapel Way – 12 units
68. 40820 Fremont Blvd. – 14 units
69. 40900 Fremont Blvd. – 29 units
70. 40910 Fremont Blvd. – 45 units
71. 40922 Fremont Blvd. – 31 units
72. 40880 Fremont Blvd. – 12 units
73. 40815 Fremont Blvd. – 44 units
74. 40861 Fremont Blvd. – 28 units
75. 41085 Fremont Blvd. – 55 units
76. 41057 Fremont Blvd. – 39 units
77. 41025 Trimboli Way – 35 units
78. 40786 Fremont Blvd. – 18 units
79. 39737 Paseo Padre Parkway – 29 units
80. 39767 Paseo Padre Parkway – 79 units
81. 41200 Blacow – 112 units
82. Stevenson Blvd./Blacow Rd. – 100 units
83. 35057 Fremont Blvd. – 18 units
84. 3880 Lake Arrowhead Ave. – 47 units



December 19, 2022

To: City of Fremont, California Department of Housing and Community Development

Re: Housing Element Public Comment

30.1

Fremont For Everyone supports the California Housing and Community Development (HCD) written comments to Fremont's proposed Housing Element.¹ We thank HCD for their thoroughness and support all of the concerns and recommendations that they raised.

We have a few further suggestions, many of which are based on Fremont's response to our earlier comments.

In regard to Programs:

1. Fremont for Everyone would like to see stronger language on proactive enforcement for substandard housing violations. We appreciate the city for adding language to Program 1 around proactive enforcement in response to our previous public comments, however, we don't feel that the language goes far enough. The current language relies on one unit in an apartment complex to make the first complaint before the city proactively inspects other units.

30.2

Proactive enforcement should not require any resident complaint. Rather, the City should initiate random inspections. This protects tenants in various ways. In a complaint-based system, landlords can retaliate against tenants who make complaints. In a proactive system, landlords would know that there may not have been any tenants who complained, so they should be less likely to retaliate.

Proactive enforcement language should further explicitly mention that these random inspections should check for ADA violations and that the City should enforce remedying accessibility issues that are found. It should be clarified in plain language, that in accordance with existing law, the tenant must not be forced to pay the cost of ADA accessibility renovations; instead the landlord must pay for these changes as part of their duty without displacing the current tenants or causing undue hardship on each tenant.

¹ <https://www.fremont.gov/home/showpublisheddocument/12005>

30.3

2. For Program 33, we applaud Fremont for adding a specific commitment. However, we feel that it does not go far enough to take advantage of the high value of the land in those areas. We encourage Fremont to alter the base zoning through SB 10 to allow more homes per lot in more configurations, not limited to the ADU configuration, up to 10 units per lot. Instead or in addition, the Program could explicitly clarify that the additional ADUs could be added on lots created through an SB 9 urban lot split.

In regard to the Sites Inventory:

30.4

1. In our previous public comment, we raised a concern about the large number of sites where AB 1397 applies, that is to say, sites that have appeared on previous housing elements already. The City responded to that part of our letter under the label 8.46; however, the specific concern about the number of AB 1397 sites was not addressed. Specifically, we would like to understand, given that these sites have not seen development during previous 8-year cycles, what has changed so that the City believes there is a good chance they will be developed in this cycle? Certainly, thanks to AB 1397 and the corresponding overlay zone (noted in Program 44), they now enjoy by-right approval for projects that contain enough affordable housing units. Does the city believe that that is sufficient that most of these sites will get developed this time? Is there more that can be done to facilitate development on these sites, such as zoning them to accommodate higher density?

30.5

2. Many of the high-unit-count sites are based on partial redevelopment of active shopping centers. While we agree that these would be excellent sites for housing due to the access to groceries, restaurants, and other amenities in these shopping centers, there are many challenges to this pattern of partial redevelopment. To help ensure development on these sites is a success, we recommend the city adopt an ordinance to allow homebuilders to maximize density by calculating the Floor Area Ratio based on the size of the full parcel, even in the case that said full parcel has been split into separate lots, for purposes of conforming to maximum densities specified by the zoning code.

30.6

3. There are some sites as an example and not limited to #268 (4440 Decoto Rd) where the existing use is already housing. For that particular site, the existing use is listed as "triplex," while the proposed redeveloped use is 2 units, which appears to be a net decrease in housing units. It's unclear how that would be consistent with SB 8, the Housing Crisis Act, or how it would add to the housing stock.

Thank you for your time and consideration, and for all your hard work on the Housing Element.

Sincerely,
Fremont for Everyone