



## Piedmont 6<sup>th</sup> Cycle Housing Element

### FAQ Zoning Regulations, Article 34 of the California Constitution, Voting, and Consequences

September 13, 2022

**1. What zoning-related actions are proposed in the current draft of the City's 6<sup>th</sup> Cycle Housing Element? When do the zoning-related actions occur?**

The adoption of a Draft Housing Element does not enact any modifications to the Zoning Ordinance. The Draft Housing Element includes policies and programs that call for revisions to the Zoning Ordinance that allow for the housing described in the Element. Implementation of modifications to the Zoning Ordinance is expected to occur within 3 years after the Element's adoption and will be subject to public review, community meetings, and consideration by the Planning Commission and City Council.

Proposed zoning-related changes in the current draft of the City's Housing Element include revisions to regulations related to building height, setbacks, lot coverage, floor area ratio, on-site parking, the number of dwelling units per acre (density), and permitting processes. The specific changes will vary by zone. The proposed implementation of 6<sup>th</sup> Cycle Draft Housing Element does not include properties to be transferred from one zoning district to another, nor includes any program that would reduce or enlarge a zoning district boundary with respect to size or area.

**2. What zoning-related actions trigger a vote of the electorate under Section 9.02 of the Piedmont Charter? Does Council approval of the 6<sup>th</sup> Cycle Housing Element automatically result in revisions to the City's zoning regulations?**

No. While the draft Housing Element includes policies and programs to revise the City's Zoning Ordinance, those actions would require the City to go through a robust public process following approval of the Housing Element before any such changes are considered and effectuated. Programs under the Housing Element, such as zoning changes, must occur within 1-3 years, depending on the date of adoption deadline. An action to adopt the Housing Element does not result in automatic changes to the City's Zoning Ordinance.

**3. After the Housing Element is certified, when and how do the changes to density (and other zoning changes) take place?**

In order to be in compliance with State Housing Element law, local jurisdictions in the ABAG region, including Piedmont, must implement significant policies and programs in their adopted Housing Elements within three years of the required adoption deadline of January 31, 2023. However, if a local jurisdiction fails to adopt a 6<sup>th</sup> cycle Housing Element by May 31, 2023, implementation of significant policies and programs must occur with 1 year of the adoption deadline.

Revisions to the Zoning Ordinance is a public process that requires community engagement and several public meetings. Community meetings generally occur before and during the drafting of a revised Code. The revisions are posted for public review and comment. The Planning Commission reviews the revisions and makes a recommendation to the City Council, which is the decision-

making body. Revisions to the City Code are by ordinance, in which the revised Code has a first and then second reading before Council, and which goes into effect 30 days after the second reading.

**4. What provisions of the City Charter might be applicable to the Housing Element update?**

According to the City Charter, a vote of the electorate is required if the City were to propose extending or reducing the boundaries of any specific zone or changing any property from one zone to another. The Charter does not require a vote if the City changes uses or densities within a zone.

**5. What is Article 34 of the California Constitution?**

Article 34 of the California Constitution provides a voter approval requirement prior to approving a “low rent housing project,” which requirement is subject to several exceptions. The issue of whether voter approval is required in a given circumstance is dependent upon the details of a specific project.

**6. If the Housing Element provides for the development of affordable housing, does Article 34 of the California Constitution require that the Housing Element be put before the voters?**

No. Article 34 of the California Constitution does not impose a requirement on public agencies to place planning documents such as Housing Element revisions before the voters.

**7. Would a vote of the electorate on the City’s Housing Element or zoning regulations provide the residents of Piedmont more control over the type, density, and location of housing in Piedmont?**

No. Even if the electorate took an action to vote on the Housing Element, the outcome of the vote would not eliminate any requirement for the City to comply with State law to meet the City’s RHNA obligations.

**8. What are the consequences and potential penalties that the City could face if it does not have a Certified Housing Element by the May 2023 deadline?**

Under legislation enacted in recent years, if a city does not comply with State law, a court may limit local land use decision-making authority including the loss of the right to approve or deny certain projects. Additionally, a city without a certified Housing Element can face significant fines and litigation. In effect, if a city does not plan to accommodate new housing units and growth in their community, the State of California will decide how the growth will occur, thereby diminishing rather than enhancing local control.

Conversely, an HCD-certified Housing Element makes cities eligible for numerous sources of funding and grants, such as Local Housing Allocations, Affordable Housing and Sustainable Communities Grants, SB 1 transportation funding for roadways and bridges, CalHOME Program Grants, Infill Infrastructure Grants, Pro-Housing Designation funding, Local Housing Trust Funds, and Regional Transportation Funds (such as MTC’s OneBayArea Grants). These funding opportunities would not be available to the City if it does not have a certified housing element.