



# CITY OF POMONA COUNCIL REPORT

---

Date: **October 15, 2018**

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted by: Mario Suarez, AICP, Development Services Director

Subject: **A Public Hearing for General Plan Amendment (GPA 90340-2017) to Revise Draft Pomona Housing Element (2013-2021) – Resolution Recommending Submission to California State Department of Housing and Community Development (HCD) after Public Comment Period**

## OVERVIEW

**Recommendation** –That the City Council consider a resolution approving a revised Draft Housing Element as recommended herein (Attachment 1 with Exhibits A & B).

**Fiscal Impact** – None with this action. Completion of the Revised Draft Housing Element would put the City on course to be in compliance with State mandates and avoid penalties related to building permit issuance and grant funding if the City remains out of compliance.

**Public Noticing Requirements** –A notice was published in the Inland Valley Daily Bulletin on Tuesday, September 11, 2018. In addition, notices were mailed to property owners within the proposed Emergency Shelter (ES) Overlay on Friday, September 21, 2018. (Attachment 2)

**Previous Related Action** - On September 26, 2018, the Planning Commission approved (5-1-0-1) a Resolution recommending that the City Council approve the Revised Draft Housing Element with five comments. (Attachment 3 through 5)

**Previous Council Action** – On February 3, 2014, the City Council approved the General Plan Amendment (GPA 14-002) pertaining to the Housing Element Update, which was submitted to the HCD for review. Comments were received from HCD, and staff had amended the 2013 version since that time. On December 18, 2017, the City Council approved a draft Housing Element Update. On September 10, 2018, the City Council reviewed the proposed ES Overlay, and Council provided direction to eliminate the use of hotel sites from the ES Overlay.

**Environmental Determination** –an Initial Study and a Negative Declaration was prepared and reviewed finding that the proposed project will not have a significant effect on the environment. The Initial Study was made available for the required 20-day public review period, which began on January 13, 2014 and will conclude on February 3, 2014. The

Negative Declaration will be updated to reflect revisions of the Revised Housing Element prior to final adoption.

## **EXECUTIVE SUMMARY**

The Revised Draft Housing Element (2013-2021) is one of seven State mandated documents in the City's General Plan. The City needs to obtain HCD approval of its Housing Element in order to protect the City's land use authority and ability to issue building permits. Council approval of the drafted amended Housing Element for a thirty-day public review will bring the City one step closer to obtaining HCD approval. In addition, commitments made as settlement of the lawsuit referenced in the Background report below are also met through the recommended revisions. As the staff report outlines, the Housing Element has undergone a multi-year review during which different attempts have been made to respond to community concerns, Council direction, State comments, and legal challenges. The draft document presented also includes a modification to the SB2 "ES overlay" to include sufficient opportunities for private emergency shelter development by-right, but such overlay does not propose specific homeless shelters be built, does not require properties to be taken for future emergency shelters, and requires the City to come back with a code amendment in 2019, after the HCD approval of the Housing Element is completed, with specific requirements in establishing an emergency shelter as a matter of right.

## **BACKGROUND**

In 2013, the City conducted survey of the homeless in Pomona and a Community Needs Survey was mailed to 45,000 households in preparation for compliance with California's 5<sup>th</sup> Cycle planning Period (1/1/2015-1/31/2023). The results of the survey were carried into the Housing Element and remain in the current Revised Draft Housing Element, Page 10-23.

In 2014, the City Council unanimously approved Resolution No. 2014-15, approving Housing Element Update and its submittal to HCD for certification. During this same time period, staff received a letter from HCD requiring specific revisions related to Housing Needs, Resources, and Constraints, Housing Programs, Public Participation and Consistency with General Plan.

Staff continued working towards compliance by completing additional public meetings and responding to HCD's 2014 noncompliance letter.

In August 2015, the City hosted a "homelessness summit" to discuss strategies to address the homelessness issues in Pomona. This resulted in the development of the Homelessness Advisory Committee which met from November 2015 through July 2016 to seek input from a wide range of community members and service providers to address homelessness issues. Through this process, staff conducted numerous meetings regarding implementation of a strategy to deal with homelessness, including a strategy for location of an emergency shelter. That process culminated in the adoption of a strategy titled "A Path Home" which among other things, led to the development of a City-sponsored homeless services center.

With the homelessness strategy in place, staff was again able to focus on continuing with completion of the Housing Element.

In 2017, staff was preparing revisions to the housing element for submission to HCD. On May 15, 2017, on behalf of plaintiffs Tommy Singleton and North Christian Church, the public interest law firm of Public Counsel filed a lawsuit against the City for being out of compliance with California housing law by not having valid Housing Element, and the version adopted not having a sufficient number of emergency shelter sites, and several other issues. As the City was in the process of addressing the Housing Element, the parties began settlement discussions almost immediately, with trial set for April 2018. Simultaneously staff continued its work on the 2017 draft of the revision to the Housing Element. A revised draft amendment to the Housing Element was submitted to HCD on December 11, 2017 to address the issues HCD had previously raised. The City of Pomona initiated General Plan Amendment (GPA 9043-2017) for the purpose of revising the Draft Housing Element of the Pomona General Plan in order to comply with State housing element law (Government Code sec. 65580, *et seq.*).

On February 28, 2018, the City submitted a Revised Draft Housing Element for HCD review. On April 27, 2018, the City received a conditional letter from HCD, finding the Revised Draft Housing Element to be in substantial compliance with State law if several technical issues were addressed. HCD's letter outlines the following conditioned comments which the current Revised Draft Housing Element is addressing:

- Implementation of Program 2.15 to identify and making zoning available for additional sites to permit emergency shelters without discretionary action sufficient to accommodate the need for emergency shelters;
- Implementation of Program 3.3 to evaluate parking requirements, particularly garage requirements and 2 spaces per unit and address these and other constraints as appropriate, and address these and other constraints as appropriate; and
- Continued engagement of the community, including organizations that represent lower-income and special needs households and commenters on this letter, by making information regularly available in a timely manner and through a variety of methods and languages and by considering and making revisions to incorporate comments where appropriate.

Issues raised by Public Counsel and the *Singleton* plaintiffs remained at issue. On January 11, 2018, staff began more formal settlement discussions with Public Counsel to address their continued concerns in anticipation of the April 2018 trial. Plaintiffs in the lawsuit still alleged that insufficient public comment periods were provided, barriers to development of low income housing opportunities still existed, and a law of minimum densities did not allow for calculation of housing supplies to address the City's share of State required housing demand (RHNA). Settlement discussion continued through May 2018 with the trial postponed until August 21, 2018. A Settlement Agreement was executed by the parties on June 26, 2018, with the court accepting such settlement on August 16, 2018. The issues agreed to be addressed and accepted by the court are as follows:

- a. **Further Computation of Credits toward RHNA:** Analyses and necessary data were missing to support the analysis done on rental and sales price of any units which the City was using to reduce the 2013-2021 Regional Housing Needs Allocation (RHNA) for lower income households.

- b. **Further Analysis of Adequate Sites for Remaining RHNA:** Data supporting a defensible inventory of adequate sites to accommodate 100 percent of the remaining RHNA allocation was not provided. This analysis needed to reflect that remaining RHNA obligation would be met using the established minimum density permitted for each site. If the inventory of sites is not adequate to accommodate remaining RHNA, rezoning for additional sites would need to occur concurrently with the adoption of the Revised Draft Housing Element.
- c. **Adopt Identified Housing Programs:** Additional revisions to housing programs are required to facilitate development of housing for lower income households. Programs would include:
1. Lot Consolidation Program to facilitate development on small sites.
  2. Reduced parking requirements in R-3 zones.
  3. A program to encourage production of housing for large families.
  4. A program to consider rezoning mobile home parks to remove the Conditional Use Permit requirement.
  5. Additional specificity in programs and schedules of actions.
  6. Additional sites with zoning to permit emergency shelters without discretionary approval.

Such issues were incorporated into the settlement terms thereby requiring staff to complete work on the Housing Element within 120 days, and to release a Revised Draft Housing Element for a 30 day review period on or before October 24, 2018. Upon review by Council and 30-day public comment period, both the requirements of the HCD conditional approval and the issues identified by the *Singleton* plaintiffs will have been incorporated into the proposed Draft Housing Element. HCD will then have 60 days to perform their review and either comment to the City for additional amendment, or approve for the City to formally adopt the Draft Housing Element. Such action is expected at the end of the first quarter of 2019.

## SCHEDULE

The following schedule addresses the current status of the process. Final adoption is contingent upon HCD review; Each round of HCD review requires at least 60 days of review by HCD.

September 14, 2018	Revised Draft Housing Element available for public review
September 26, 2018	Planning Commission review of Revised Draft Housing Element
October 15, 2018	City Council review of Revised Draft Housing Element
December 6, 2018	Final Revised Draft Housing Element to HCD, incorporating public comments
February 4, 2019	HCD completes 60-day review of Final Revised Draft Housing Element
March 2019	Adoption hearings (Planning Commission and City Council)

## SUMMARY OF REVISIONS

To facilitate housing development, to begin implementation of the programs and objectives in the February 2018 Draft Housing Element, the City conducted additional community outreach

and made further revisions to the Draft Housing Element. The following summarizes the key revisions made to the February 2018 Draft Housing Element:

- **Credits toward RHNA:** The City verified the number of housing units already constructed and income distribution based on deed restrictions or other program restrictions. Between 2014 and May 2018, the City constructed and approved a total of 1,477 units, including 211 very low income units, 89 low income units, 11 moderate income units, and 1,166 above moderate income units.
- **Adequate Sites for Remaining RHNA:** Based on the updated RHNA credits, the City has a remaining RHNA of 2,149 units, including 708 very low income units, 454 low income units, 581 moderate income units, and 406 above moderate income units (see Table 10.3-3).

The sites inventory has been updated to reflect current status of parcels and recalculate development potential based on a minimum density of 40 units per acre for Transit Oriented Development (TOD) sites in the Downtown Area, and varying minimum densities for parcels outside the Downtown Area pursuant to the General Plan transect zones. Overall, the vacant and underutilized sites with near-term development potential can accommodate an additional 2,785 units, adequate for the remaining RHNA (see Table 10.3-2).

- **Housing Programs:** The Housing Plan has been revised to reflect the City's current efforts in implementation and to add new programs to further facilitate housing development:
  - Minimum densities (Program 2.13) – Revised program. The City is processing a text amendment to establish a minimum density of 40 units per acre within the Downtown TOD area. Text amendment is scheduled to complete by end of 2018.
  - Lot Consolidation (Program 2.14) – New program added.
  - Parking standards for multi-family development in MF zones (Program 2.15) – New program added.
  - ES Overlay (Program 2.18) – Revised program. Additional sites have been selected to be designated ES Overlay. Amendment to the Zoning Code is anticipated to be completed by the end of 2018.
  - Production of housing for large families (Program 2.19 and Program 2.20) – Existing programs in the February 2018 Housing Element. Both programs aim to facilitate housing appropriate to large families. Furthermore, the City adopted a Small Lot Residential Development Zone in May 2018 to promote single-family development in small lots. Such housing would offer a more affordable housing option for large families.
  - Development of mobile home parks (Program 3.5) – New program added.

## **PROPOSED EMERGENCY SHELTERS (ES) OVERLAY**

### **Current City Policies:**

The existing parcels designated for “by-right” development as emergency shelters pursuant to SB2 are located at 1390 and 1400 E. Mission. As both of these sites are City-owned, they are not

able to be developed “by-right”, and additional sites are required to be identified and designated.

The City also has existing policies in the Pomona Zoning Ordinance relating to emergency shelters:

- Conditionally permits emergency shelters in C-IND, M-1, and M-2 zones (Not compliant under SB2).
- Determination of Similarity (DOS) permitting transitional housing/emergency shelters in the R-1-7,200 and R-2 zones by right for up to six persons, and with CUP for seven to twelve persons (Likely not Compliant under SB2)

In the 1990s three transitional housing/emergency shelters were permitted in R-1 and R-2 zones using the DOS process; there is no record if it being used since. However, transitional housing is a separate housing type from emergency shelters under SB 2, with different requirements. Staff recommends that the Council reconsider these existing policies with the adoption of an ES Overlay, as the CUP requirement and DOS process not compliant with state law.

### **Proposed Sites**

The proposed ES Overlay has three components:

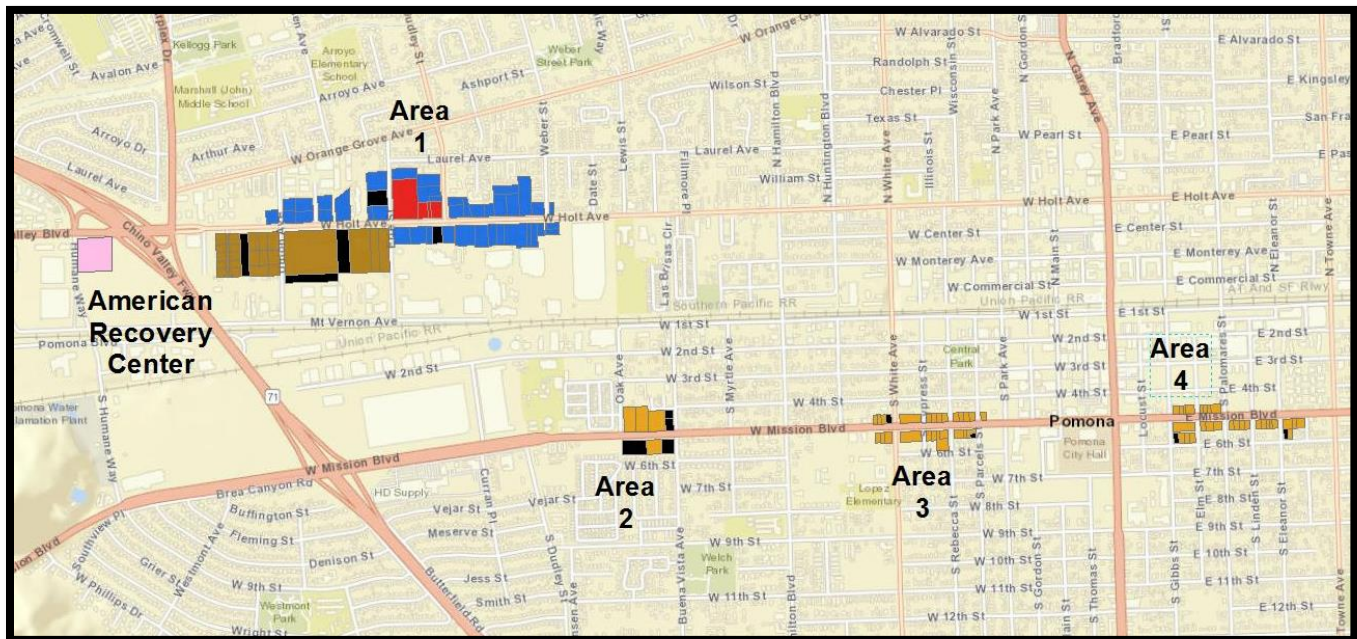
- Existing parcels (1390 and 1400 E. Mission)
- Additional parcels in Corridors Specific Plan (143 parcels, 85 acres)
- Additional parcels at American Recovery Center (1 parcel, 3.83 acres)

Criteria for identifying potential ES Overlay parcels is as follows:

- Parcels must be located near public transportation to access services.
- Areas must include some vacant properties that offer immediate opportunities for future emergency shelters.

The map below focuses on the proposed additional ES Overlay areas. (Existing sites ES Overlay sites at 1400 E. Mission and 1390 E. Mission are not included here as they are currently being built-on by the City to establish an emergency shelter to be opened in November 2018). Identifying these sites in the Housing Element does not amend the Zoning Map and Zoning Code text, which would need to come back for approval in 2019 upon acceptance by HCD.

**Map 1: Proposed ES Overlay Areas 1-4**



Based on community comments at the Planning Commission, and comments received by Public Counsel on October 9, 2018, staff has revisited the analysis of Areas 1-4. (Further discussion at p. 11). Staff has analyzed removal of Area 4 in Map 1 from the ES Overlay. Such action would result in a reduction of only 1 vacant non-city owned property, as two parcels identified as vacant are identified in property records as being owned by the Redevelopment Agency. The removal of the entire Area 4 would result in a reduction of 5.46 acres from the 88.83 acres proposed, and 30 parcels from the September 13, 2018 144 parcels proposed.

### **ES Overlay for Other Communities**

At the September 26, 2018 Planning Commission meeting, several comments were heard regarding comparisons to other cities and the SB2 ES Overlay zone. There is no standard or rule of thumb for how large of a zone is considered to be adequate by HCD. Below is the ES zoning approach of some communities have taken:

**ES Overlay of Other Communities table on**

<b>City</b>	<b>2018 Population</b>	<b>2018 PIT Count Sheltered</b>	<b>2018 PIT Count Unsheltered</b>	<b>Comment</b>	<b>SB 2 Compliance</b>
Pomona	155,687	188	585	American Recovery Center and Areas 1-4	Total: 144 Parcels, 88.83 Acres Vacant: 34 Parcels, 15.6 Acres
Pasadena	144,388	215	462	Similar population size	Total: 395 parcels, 175 acres. Located in Light Industrial, Central District, and East Pasadena Specific Plan Light Industrial districts
San Clemente	65,543	50	33	Lawsuit filed regarding prior ES Overlay that relied on City-owned properties and churches.  New ES Overlay uses similar methodology in selecting areas	Total: 145 Parcels, 288 acres (significant unsuitable acreage/hillside), 24 acres vacant. Located in Rancho San Clemente Business Park

Based on the experience of Veronica Tam & Associates, it is anticipated that the designation of American Recovery Center and Areas 1-4 with the current vacancy analysis in those areas will be sufficient to address the Emergency Shelter requirements of SB 2.

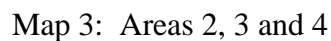
**Separation Requirement**

SB 2 allows only one distance requirement – a maximum of 300 feet distance between two emergency shelters—as a basis for shelter location.

A separation from residential or sensitive uses is not allowed under State law, nor is such being proposed here. Upon selection of sites for inclusion within the proposed ES Overlay, a sufficient number of sites is being proposed.

**Illustration of Separation Requirement of potential distribution on next page:**





On September 26, 2018, the Planning Commission recommended that the City Council approve General Plan Amendment (GPA 9043-2017) amending the Pomona General Plan to update the Housing Element for the planning period October 15, 2013 through October 15, 2021 with the following comments with staff's responses under each:

- a. Staff to provide City Council with an explanation of the ES Overlay**  
Staff will be providing a presentation of the “sensitivity analysis” conducted in the selection of the Emergency Shelter Overlay at the October 15, 2018 City Council Meeting.

**Staff Comment:** Additional information has been incorporated into this staff report to address this issue

- b. Suggest to include a program to monitor the City's Emergency Shelter program status**  
Staff will be developing language to incorporate a program to monitor Emergency Shelter program which will include incorporation of a monitoring system with proposed amendment of the Emergency Shelter Ordinance Amendment to be drafted in 2019.

**Staff Comment:** No issues with incorporating such status reporting.

- c. Consider removing the ES Overlay properties**

This recommendation focused on the proposed parcels between South Eleanor Street and Humane Way on Mission Avenue, and away from Downtown.

**Staff Comment:** A sufficient number of properties are required to be included in the ES Overlay to provide a sufficient number of sites and acreage available to provide adequate sites for HCD to consider in their review of the draft Housing Element. All properties proposed by staff were identified as potential sites suitable for this type of development because the sites are on a transportation corridor with ample access to services and public transportation, are within walking distance to social services, and include several currently vacant properties.

Consideration of reducing the number of areas has been reviewed by staff and reductions in the four areas recommended for development of future Zoning Code Amendment has been analyzed. As of the October 10, 2018, staff reduced the areas for City Council consideration from 101.15 acres (182 parcels) to 88.77 acres (144 parcels) by removing parcels between Myrtle Ave. and White Ave. along Mission Blvd in Area 3. As discussed above, Council may consider elimination of ES Overlay Area 4 to address concerns regarding location of sites near Downtown Pomona. Such further reductions, would result in a net acreage in the ES Overlay of 81.53 acres and 112 parcels.

- d. Do Not eliminate the Conditional Use Permit (CUP) Requirement for Mobile Home Parks (MHP)**

The Planning Commission recommended against eliminating the requirement for a conditional use permit for mobile home parks.

**Staff Comment:** A term of the settlement agreement in the *Singleton* case was to consider removing the CUP requirement that currently exists under the Pomona Zoning Ordinance. The proposal is not to eliminate all standards of development on mobile home parks, but rather to eliminate the delay and cost associated with the procedural step of going to the planning commission associated with issuance of a CUP. It is staff's recommendation that the Housing Element identify that removal of the CUP requirement and that standards and conditions associated with Mobile Home Park development be considered by the City Council in an amendment of the Pomona Zoning Ordinance as a text amendment.

The City's Revised Draft Housing Element Program 3.5 includes the program language for the City to facilitate the development of mobile home parks. Staff will amend this program to clarify that the City shall consider amending the Zoning Code to incorporate specific site

and development standards which allow for mobile home developments as a matter of right. This would eliminate the application and discretionary review of MHP applications by the Planning Commission, but will not eliminate the imposition of conditions and mitigation measures on such uses. Such regulations will be incorporated directly into the code rather than being done on an ad hoc basis.

- e. **When feasible, return to the Planning Commission for additional study session and status of the Revised Housing Element.**

**Staff Comment:** Staff will be scheduling a Housing Element Study Session with the Planning Commission in the future to provide an update on the status of Revised Housing Element.

### **COMMENTS FROM PUBLIC COUNSEL RECEIVED OCTOBER 9, 2018**

On October 9, Antonio Hicks from Public Counsel provided correspondence directly to all members of the City Council addressing their comments regarding the September Draft of the Housing Element. (Attachment 6). Those comments are briefly summarized below with staff comment in response.

**Comment re Program 2.1- State Density Bonus Requirements:** City's local ordinance should be updated to address recent state changes to density bonus requirements for transitional foster youth and senior housing to reflect recent changes in California law.

**Staff Response:** Revised Draft will include state-mandated density bonus requirements.

**Comment re Program 2.2- Use of City/Successor Agency Properties:** City goal of potentially using City/Successor Agency owned sites to promote affordable housing development must comply with Surplus Lands Act.

**Staff Response:** Agreed. Disposal of land by City and Successor Agency must comply with Surplus Land Act. No change to Revised Housing Element necessary.

**Comment re Program 2.18- ES Overlay:** City should provide analysis on parcel size of the 35 vacant parcels identified as vacant to determine capacity of site to accommodate the shelter need.

**Staff Response:** Properties owned by the City, Housing Authority, or Successor Agency have been removed from the overlay as the decision to dispose of these properties for development would constitute a discretionary decision and therefore no meeting SB 2 requirement.

The revised proposed ES Overlay encompasses 145 parcels, totaling 80.21 acres of privately held properties. Within the revised proposed ES Overlay, 14 parcels totaling 8.93 acres are vacant. Five of these vacant parcels are between 1.0 acre and 1.81 acres, a size range that can accommodate an adequately sized shelter facility. The City is constructing a new homeless facility 1390 and 1400 E. Mission – a 1.34-acre site. This facility will include supportive services in addition to shelter beds.

The American Recovery Center site is 3.83 acres. A large portion of this site is vacant or underutilized. Another two adjacent vacant parcels, when consolidated, would total 0.57 acre.

This size of a site should also be able to accommodate an adequately sized homeless facility.

Furthermore, Homeless Shelter developers are not restricted to vacant properties only in the proposed ES Overlay. This area contains some old industrial/commercial buildings that can be repurposed as a shelter.

**Comment re Program 2.19- Program Timeline:** City should provide detail of when a rule to consider housing development requirements for 3 or more bedrooms will be considered.

**Staff Response:** Such action to be presented to Council within 180 days of adoption of the Housing Element.

**Comment re Emergency Shelter Overlay:** City identified criteria of sites include proximity to single family residential uses and “sensitive uses”. Such criteria are contrary to State law.

**Staff Response:** Such distance requirements are not being proposed as a means to disqualify properties in the ES Overlay. Reference at p. 10-54 and 10-55 to such criteria is proposed to be removed from the Revised Draft Housing Element.

## **RECOMMENDATIONS WITHIN DRAFT CITY COUNCIL RESOLUTION**

The following are staff recommendations included in in the Draft City Council Resolution:

1. Include the proposed ES Overlay in the Revised Draft Housing Element for public and HCD review; Receive direction on additional properties or amendment of Areas 1-4
2. Eliminate existing Zoning provisions regarding following:
  - Shelters via CUP in M-1, M-2, and C-IND zones
  - Transitional housing and emergency shelters in R-1-7200 and R-2 zones
  - Requirement of CUP for mobile home park development
3. Release the Revised Draft Housing Element for minimum 30 day public review; and
4. Submit Revised Draft Housing Element to California Department of Housing and Community Development on or before December 7, 2018.
5. Modify Program 3.5 so that a text amendment is considered by the City in 2019.
6. Revised Draft Housing Element, p. 10-54, bullet points 2 and 3: Eliminate statement regarding 300’ distance requirement from single family residential uses, and from “sensitive uses”.
7. Revised Draft Housing Element, p. 10-55: Eliminate “sensitive uses” from first sentence in para. 1.
8. Amend Program 2.19 timeline regarding a text amendment concerning development of requirements for large residential units will be considered by the City within 180 from final adoption of the Housing Element.

**Attachments**

1. City Council Draft Resolution No. \_\_\_\_-2018  
Exhibit A: Revised Draft Housing Element  
Exhibit B: Appendix
2. Newspaper Publication and Map (sent to property owners within ES Overlay)
3. Planning Commission Resolution No. \_\_\_\_-2018
4. Planning Commission Draft Minutes Dated September 26, 2018
5. Planning Commission Staff Report Cover no attachments
6. Letter dated October 9, 2018, from Antonio Hicks, Public Counsel