



CITY COUNCIL

Agenda

Aug. 27, 2020 Special Meeting
3 p.m.

Council Chamber
1200 Carlsbad Village Drive
Carlsbad, CA 92008

Welcome to Your City Council Meeting

We welcome your interest and involvement in the city's legislative process. This agenda includes information about topics coming before the City Council and the action recommended by city staff. You can read about each topic in the staff reports, which are available on the city website and in the Office of the City Clerk. The City Clerk is also available to answer any questions you have about City Council meeting procedures.

How to watch



City cable channel

Charter Spectrum channel 24 AT&T
U-verse channel 99.



City website

carlsbadca.gov/news/cityty.asp

Virtual meeting format

- Per California Executive Order N-29-20, and in the interest of public health and safety, we are temporarily taking actions to prevent and mitigate the effects of the COVID-19 pandemic by holding City Council and other public meetings online only.
- All public meetings will comply with public noticing requirements in the Brown Act and will be made accessible electronically to all members of the public seeking to observe and address the City Council.

How to participate

- **By phone:** Sign up at <https://www.carlsbadca.gov/cityhall/clerk/meetings/default.asp> by 2 p.m. the day of the meeting to provide comments live by phone. You will receive a confirmation email with instructions about how to call in.
- **In writing:** Email comments to clerk@carlsbadca.gov. Comments received by 2 p.m. the day of the meeting will be shared with the City Council prior to the meeting. When e-mailing comments, please identify in the subject line the agenda item to which your comments relate. All comments received will be included as part of the official record. **Written comments will not be read out loud.**
- These procedures shall remain in place during the period in which state or local health officials have imposed or recommended social distancing measures.

Reasonable accommodations

Persons with a disability may request an agenda packet in appropriate alternative formats as require by the Americans with Disabilities Act of 1990. Reasonable accommodations and auxiliary aids will be provided to effectively allow participation in the meeting. Please contact the City Manager's Office at 760-434-2821 (voice), 711 (free relay service for TTY users), 760-720-9461 (fax) or manager@carlsbadca.gov by noon on the Monday before the meeting to make arrangements.

IN THE EVENT A QUORUM OF THE CITY COUNCIL LOSES ELECTRICAL POWER OR SUFFERS AN INTERNET CONNECTION OUTAGE THAT IS NOT CORRECTED WITHIN 15 MINUTES, THE MEETING WILL AUTOMATICALLY BE ADJOURNED. ANY ITEMS NOTICED AS PUBLIC HEARINGS WILL BE CONTINUED TO THE NEXT REGULARLY SCHEDULED MEETING OF THE CITY COUNCIL. ANY OTHER AGENDA ITEMS THE COUNCIL HAS NOT TAKEN ACTION ON WILL BE PLACED ON A FUTURE AGENDA.

More information about City Council meeting procedures can be found at the end of this agenda and in the Carlsbad Municipal Code chapter 1.20. PLEASE NOTE: AS A RESULT OF THE WAIVERS IN EXECUTIVE ORDER N-29-20, THE BROWN ACT PERMITS FULL PARTICIPATION BY OFFICIALS IN MEETINGS THROUGH VIDEO OR AUDIO TELECONFERENCE.

The City Council also sits as the Carlsbad Municipal Water District Board, Public Financing Authority Board, Community Development Commission and Successor Agency to the Redevelopment Agency. When considering items presented to the Carlsbad Municipal Water District Board, each member receives an additional \$100 per meeting (max \$300/month). When considering items presented to the Community Development Commission each member receives an additional \$75 per meeting (max \$150/month).

CALL TO ORDER:

ROLL CALL:

ANNOUNCEMENT OF CONCURRENT MEETINGS: None.

INVOCATION: None.

PLEDGE OF ALLEGIANCE:

DEPARTMENTAL AND CITY MANAGER REPORTS:

1. **PROPOSED METHODOLOGIES FOR CHOOSING LOCATIONS FOR FUTURE HOUSING IN CARLSBAD AS A PART OF REQUIRED UPDATE TO THE HOUSING ELEMENT OF THE GENERAL PLAN** – 1) Receive a report on proposed methods for selecting potential housing sites to meet Carlsbad’s share of the region’s future housing needs; and
 2) Provide direction to staff, as needed, on any changes or additions to the proposed methods; and
 3) Allocate additional funds not to exceed \$55,000 to cover costs for outside legal counsel to assist in the legal review of the city’s Housing Element Update (Project Name: Housing Element Update 2021-2029; Project No.: GPA 2019-0003 (PUB 2019-0009)). (Staff contact: Scott Donnell, Community Development)

City Manager’s Recommendation: Receive the report, provide direction to staff and appropriate funds.

COUNCIL COMMENTARY AND REQUESTS FOR CONSIDERATION OF MATTERS:

City Council Regional Assignments (Revised 4/7/20)

Matt Hall Mayor	North County Mayors and Managers City/School Committee Chamber of Commerce Liaison (primary) Clean Energy Alliance JPA (alternate) San Diego County Water Authority San Diego Regional Economic Development Corporation Board of Directors
Keith Blackburn Mayor Pro Tem	Buena Vista Lagoon JPC Encina Wastewater Authority/JAC Board of Directors North County Dispatch Joint Powers Authority Chamber of Commerce Liaison (alternate) SANDAG (1 st alternate) North County Transit District (alternate)
Priya Bhat-Patel Council Member – District 3	SANDAG (2 nd alternate) North County Transit District (primary) City/School Committee League of California Cities – SD Division Encina Wastewater Authority/JAC Board of Directors (alternate)
Cori Schumacher Council Member – District 1	SANDAG (primary) Buena Vista Lagoon JPC Clean Energy Alliance JPA (primary) Encina Wastewater Authority/JAC Board of Directors North County Dispatch Joint Powers Authority (alternate)

Vacant – At-Large Council Member

PUBLIC COMMENT: Continuation of the Public Comments

This portion of the agenda is set aside for continuation of public comments, if necessary, due to exceeding the total time allotted in the first public comments section. The City Clerk shall read any remaining public comments into the record. In conformance with the Brown Act, no Council action can occur on these items.

ANNOUNCEMENTS:

This section of the Agenda is designated for announcements to advise the community regarding events that Members of the City Council have been invited to, and may participate in.

CITY MANAGER COMMENTS:

CITY ATTORNEY COMMENTS:

ADJOURNMENT:

City Council Meeting Procedures *(continued from page 1)*

Written Materials

Written materials related to the agenda that are submitted to the City Council after the agenda packet has been published will be available for review prior to the meeting during normal business hours at the City Clerk's office, 1200 Carlsbad Village Drive and on the city website. To review these materials during the meeting, please see the City Clerk

Visual Materials

Visual materials, such as pictures, charts, maps or slides, are allowed for comments on agenda items, not general public comment. Please contact the City Manager's Office at 760-434-2820 or manager@carlsbadca.gov to make arrangements in advance. All materials must be received by the City Manager's Office no later than noon the day before the meeting. The time spent presenting visual materials is included in the maximum time limit provided to speakers. All materials exhibited to the City Council during the meeting are part of the public record. **Please note that video presentations are not allowed.**

Decorum

All participants are expected to conduct themselves with mutual respect. Loud, boisterous and unruly behavior can interfere with the ability of the City Council to conduct the people's business. That's why it is illegal to disrupt a City Council meeting. Following a warning from the presiding officer, those engaging in disruptive behavior are subject to law enforcement action.

City Council Agenda

The City Council follows a regular order of business that is specified in the Carlsbad Municipal Code. The City Council may only make decisions about topics listed on the agenda.

Presentations

The City Council often recognizes individuals and groups for achievements and contributions to the community. Well-wishers often fill the chamber during presentations to show their support and perhaps get a photo. If you don't see an open seat when you arrive, there will likely be one once the presentations are over.

Consent Items

Consent items are considered routine and may be enacted together by one motion and vote. Any City Council member may remove or "pull" an item from the "consent calendar" for a separate vote. Members of the public may pull an item from the consent calendar by requesting to speak about that item. A speaker request form must be submitted to the clerk prior to the start of the consent portion of the agenda.

Public Comment

Members of the public may speak on any city related item that does not appear on the agenda. State law prohibits the City Council from taking action on items not listed on the agenda. Comments requiring follow up will be referred to staff and, if appropriate, considered at a future City Council meeting. Members of the public are also welcome to provide comments on agenda items during the portions of the meeting when those items are being discussed. In both cases, a request to speak form must be submitted to the clerk in advance of that portion of the meeting beginning.

Public Hearing

Certain actions by the City Council require a “public hearing,” which is a time within the regular meeting that has been set aside and noticed according to different rules.

Departmental Reports

This part of the agenda is for items that are not considered routine and do not require a public hearing. These items are usually presented to the City Council by city staff and can be informational in nature or require action. The staff report about each item indicates the purpose of the item and whether or not action is requested.

Other Reports

At the end of each meeting, City Council members and the city manager, city attorney and city clerk are given an opportunity to share information. This usually includes reports about recent meetings, regional issues, and recent or upcoming meetings and events.

City Council Actions

Resolution

A resolution is an official statement of City Council policy that directs administrative or legal action or embodies a public City Council statement. A resolution may be introduced and adopted at the same meeting. Once adopted, it remains City Council policy until changed by subsequent City Council resolution.

Ordinance

Ordinances are city laws contained in the Carlsbad Municipal Code. Enacting a new city law or changing an existing one is a two-step process. First, the ordinance is “introduced” by city staff to the City Council. If the City Council votes in favor of the introduction, the ordinance will be placed on a subsequent City Council meeting agenda for “adoption.” If the City Council votes to adopt the ordinance, it will usually go into effect 30 days later.

Motion

A motion is used to propose City Council direction related to an item on the agenda. Any City Council member may make a motion. A motion must receive a “second” from another City Council member to be eligible for a City Council vote.



CITY COUNCIL
Staff Report

Meeting Date: August 27, 2020

To: Mayor and City Council

From: Scott Chadwick, City Manager

Staff Contact: Scott Donnell, Senior Planner
Scott.donnell@carlsbadca.gov or 760-602-4618

Subject: Our Home Our Future – Proposed Methodologies for Choosing Locations for Future Housing in Carlsbad, as Part of Required Update to Housing Element of the General Plan

Project Name: Housing Element Update 2021-2029

Project No.: GPA 2019-0003 (PUB 2019-0009)

Recommended Action

Staff recommends that the City Council:

- 1) Receive a report on proposed methods for selecting potential housing sites to meet Carlsbad’s share of the region’s future housing needs.
- 2) Provide direction to staff, as needed, on any changes or additions to the proposed methods.
- 3) Allocate additional funds not to exceed \$55,000 to cover costs for outside legal counsel to assist in the legal review of the city’s Housing Element Update

Executive Summary

As required under state law, the city has begun updating the Housing Element in the city’s General Plan. The Housing Element provides the city with a coordinated and comprehensive strategy for promoting the production of safe, decent and affordable housing for varying income-levels within the community for the next eight years, from April 2021 through April 2029.

The periodic process of updating local housing elements includes a regional assessment to quantify the need for housing within each jurisdiction during the specified planning periods. This is called the regional housing needs assessment, also known as RHNA.

The latest regional housing needs assessment for San Diego County calls for 3,873 housing units, including 2,195 for residents in the low- and very low-income categories, to be created in Carlsbad during this period. The city must demonstrate to the state Department of Housing and Community Development that its local housing plan, the Housing Element, has adequate land capacity and implementing policies to accommodate building its share of housing units.

There are several ways to meet this need. Based on technical analysis, input from the City Council-appointed Housing Element Advisory Committee and feedback from the community, staff developed several approaches or methodologies that could be used to decide how to meet future housing needs. It is going to take a combination of these methodologies to develop a plan that will be able to accommodate the assigned housing numbers.

Staff is providing the City Council with this report on these methodologies to receive City Council input and direction before using them to create draft maps that would show proposed specific locations where new housing could be built in the future. Once these maps are created, the following steps will take place:

- Outreach to owners of affected properties to determine interest in land use or zoning changes
- Environmental analysis
- Review and input by the Housing Element Advisory Committee and the public

Based on feedback and further analysis, staff will return to the City Council in early 2021 with a draft of the city’s Housing Element update, including the recommended map showing locations of future housing in Carlsbad.

Discussion

State law requires cities and counties in California to update their housing elements every eight years. The law and steps taken to update a housing plan are complicated, but to help the community better understand the terminology and processes used, staff developed an information bulletin that answers many common questions, including how the state determines housing requirements for jurisdictions, what qualifies as affordable, how density translates to affordability, the process localities must follow to secure a certified Housing Element and the implications for failing to meet required state housing goals. This bulletin is attached as Exhibit 1.

On July 10, 2020, the San Diego Association of Governments Board of Directors adopted the final Regional Housing Needs Assessment Plan for San Diego County. The plan accepted the state housing department’s determination that 171,685 housing units were needed in the region. Based on a SANDAG-developed methodology, those units were allocated to the 18 cities in San Diego County and its unincorporated areas. The City of Carlsbad’s share is as follows:

2021-2029 Regional Housing Needs Assessment allocation by income				
Very low	Low	Moderate	Moderate +	Total
1,311	784	749	1,029	3,873

When compared to the city’s RHNA allocation for the current housing cycle, from 2013-2021, the city was assigned 27% fewer housing units overall for this upcoming housing cycle, a drop of 1,126. This is reflected in the chart below:

2013-2021 Regional Housing Needs Assessment allocation by income				
Very low	Low	Moderate	Moderate +	Total
912	693	1,062	2,332	4,999

The type of housing assigned for the next housing cycle changed significantly. The assessment included:

- 48% (1,616 units) reduction in housing for moderate and above-moderate income (“Moderate +”) residents. These types of housing are typically single-family and lower density development.
- 31% (490 units) increase in housing assigned for low and very-low income categories. This type of housing is typically higher density development such as apartments and condominiums.

Net housing increase based on current plan

The first step in updating the city’s housing element is to look at the existing housing element to determine if the plan already has the capacity to accommodate all or a portion of the assigned housing units.

The chart below shows the number of housing units, by income category, that staff estimate can be carried over to the new housing plan. This is only an estimate because the state housing department has the final say as to whether sites can be counted for future housing. This determination is made once a draft of the housing element is submitted for review.

Source	Units by income levels		
	Very low/ Low	Moderate	Moderate +
RHNA (total housing assigned to Carlsbad)	2,095	749	1,029
Housing in General Plan	(466)	(129)	(496)
Housing already planned (no rezoning required) ¹	(404)	(21)	(1,409)
Current accessory dwelling units (granny flats)	(185)	(476)	0
Net amount of new housing required	1,040	123	(876)
Net amount of new housing required with “buffer” ²	1,354	235	---

¹ Includes several development projects, three of which propose a state density bonus or local density increase that will result in an additional 57 very low-income units and 226 moderate + units above the density allowed under current zoning.

² The state housing department recommends that a buffer be built into the plan in the event a site does not get built at the level of affordability planned. Staff assumed a buffer based on 15% of the gross RHNA total. The state recommends a buffer of 15 to 30%.

Current General Plan

The city’s General Plan is a broad policy document that serves as a blueprint for how land will be used in the city. The city’s current General Plan was adopted by the City Council in 2015 following eight years of technical analysis and community input.

The General Plan identifies locations for housing that have been vetted by the community and undergone analysis required by the California Environmental Quality Act. Using housing units already included in the city’s General Plan to meet the city’s new housing allocation reduces the need to find other properties. Finding new properties for housing in Carlsbad requires an extensive process including legal and technical analysis, environmental analysis, community

outreach, property owner outreach and potentially legislative action to change land uses and zoning.

The following three types of properties identified in the city's General Plan can meet a significant percentage of the city's assigned housing needs.

- Vacant/underutilized sites
Underutilized sites are those not developed to their full potential and signify opportunities for additional housing. A draft map showing both vacant and underutilized existing eligible sites is attached as Exhibit 2.
- Planned/pending projects (no rezoning proposed)
Under state law, development projects that are in the entitlement processes as of June 30, 2020, and anticipated to be constructed by the end of the eight-year cycle, can be counted toward the RHNA obligations for the housing plan. The units listed in this section are associated with development projects that are either approved, that is, entitled but not built, or pending (Exhibit 3).

The pending projects do not require a change in zoning based on the densities currently allowed in the General Plan. The exception is noted in the chart above for three projects whose developers are proposing increased densities through means other than rezoning. The units built through planned projects are being identified separately because they represent a realistic view of the type, such as the affordability of unit, and density that can be achieved on those sites. Should the projects not get approved or built, the city can still count the sites as part of its housing inventory based on their underlying zoning.

- Accessory dwelling units
In recent years, the state legislature has relaxed laws to promote the production of accessory dwelling units (granny flats), which the state considers a viable affordable housing choice. The state housing department now allows jurisdictions to assume a unit count that is three to five times the average of the housing produced in the past. The state housing department has advised Carlsbad to base its estimates of producing accessory dwelling units on permitting data from 2015 and 2016.-The city's annual average ADU production rate for 2015 and 2016 was 25 units.

To be conservative, staff has assumed a rate three times the average, or 75 accessory dwelling units per year.¹ This assumption likely will need support in the way of proposed Housing Element programs that, for example, promote ADU awareness and education. ADU construction is also not linked to a specific quadrant and could occur anywhere in the city's residential areas. Their development also does not count toward the caps on dwelling units contained in the city's Growth Management Plan.

¹ HCD permits a jurisdiction to count toward its RHNA obligations the units it estimates will be produced over a nearly nine-year projection period. In the San Diego region, this period began June 30, 2020, and will end April 15, 2029.

Methodologies to meet housing allocation

To identify additional housing locations, beyond what can be accommodated by the three categories above, city staff have identified the following potential methodologies:

Assume midrange densities

Up-zone existing residentially zoned properties

Count proposed projects that include a rezone

Use city-owned properties

Rezone select commercial properties to residential

Rezone select industrial properties to residential

Each methodology is described below, accompanied with the potential number of dwelling units it is expected to yield, as well as its benefits and possible drawbacks.

Assume midrange densities

The General Plan assigns residential properties a range of densities that can be constructed. For example, the R-30 land use designation allows a residential density range of 23-30 dwelling units per acre, referred to as du/ac. Under the current housing element, staff calculated unit yield² for purposes of Housing Element compliance at the low (minimum) end of the density range, or, in the case of R-30, at 23 du/ac.

The proposed methodology suggests that by requiring developers to build at the middle of the residential density range, 26.5 du/ac, instead of at the minimum, 23 du/ac, the city could generate additional very low and low-income units. This methodology, which would be applied to existing R-15, R-23 and R-30 sites, as well as any new R-35 and R-40 designated sites (see next section), could generate several hundred units that could qualify for the moderate- and lower-income categories.

- Potential benefits
 - No change in zoning is required.
 - City has used this approach successfully in the 2005-2013 housing cycle.
- Possible drawbacks
 - Some sites may not be appropriate for midrange density

Up-zone existing residentially zoned properties

Because the General Plan assigns more than enough sites to meet the city's above-moderate income category, some of these sites could be rezoned to higher densities. This is called up-zoning. Higher density development tends to provide housing for lower income residents. Under this methodology, the existing designations of the vacant and underutilized sites might change as follows:

² Unit yield refers to the number of units, or homes, that can be achieved based on the density allowed per acre.

Existing Designation	du/ac	Possible New Designation	du/ac
R-4	0-4	R-23 R-30	15-23 23-30
R-15	8-15	R-23 R-30 R-35	15-23 23-30 30-35
R-23	15-23	R-30 R-35 R-40	23-30 30-35 35-40
R-30	23-30	R-35 R-40	30-35 35-40

Properties affected by this methodology are mostly in the northeast quadrant near El Camino Real and College Boulevard (in Sunny Creek/Local Facility Management Zone 15) and in the southwest quadrant, including the Ponto area (Exhibit 4). Depending on the site and density applied, this methodology could generate over 1,000 units that would qualify under the lower income category.

- Potential benefits
 - Affects properties that are currently zoned for residential use.
 - Helps balance the types (income levels) of housing to be built in the city.
 - Additional density could make infrastructure completion more feasible (LFMZ 15).
- Possible drawbacks
 - To achieve a density of 35 or 40 du/ac, building size will likely need to be four to five stories.
 - Introduces higher density development in lower density neighborhoods.
 - While this methodology increases low income unit counts, it decreases counts for above moderate units.

Count proposed projects that include a rezone

Not reflected in the planned projects in the section above are two current development proposals that could contribute to meeting the city’s RHNA need:

- North County Plaza - Residential and commercial project with 240 apartments west of The Shoppes
- West Oaks - Proposed conversion of vacant industrial land into a 192-unit apartment project

While development applications have been formally filed, these projects are not counted as part of the planned projects above because their developers seek a land use change or propose to residentially develop commercial land. This methodology could generate a little less than 100 units in the lower income category.

- Potential benefits
 - Actual applications reflecting housing type and density that can be achieved
 - Interested property owner
- Possible drawbacks
 - Projects require a rezone
 - If projects are denied, city loses the units counted toward meetings its RHNA need.

Utilize city-owned or government agency-owned properties

The city currently owns or holds interest in a few properties that could be rezoned to allow for future lower income housing (Exhibit 5). Examples include:

- The northern-most city-owned industrial/office lot (Lot 5) on College Boulevard near Palomar Point Way
- City owned parking lot portion of The Shoppes @ Carlsbad

This methodology could generate around 300 to 400 units that would qualify under lower income category. This could also include working with the North County Transit District to possibly use its vacant property in the Village by the Coaster Station.

- Potential benefits
 - City-owned property could help reduce overall development costs, resulting in more potential affordable units.
 - Some sites located in areas with services that could possibly accommodate higher density development (40 du/ac) with higher percentage of dedicated affordable units
 - Some sites are near job centers and transit corridors.
- Possible drawbacks
 - Residential use of some city properties is inconsistent with the City Council adopted 2017 Real Estate Strategic Plan
 - Title and ownership issues to resolve
 - Actual density possibilities unknown
 - Long entitlement process
 - Adequate parking for the mall must be maintained
 - Jurisdictional boundary concerns
 - Roadway improvement concerns

Rezone select commercial properties to residential

While the city must plan for commercial and retail growth to serve the additional housing growth, there are a few properties in the city that are currently zoned for commercial use that could feasibly be rezoned to accommodate higher density residential development (Exhibit 6). As an example:

- The vacant commercially designated portion of property on the northeast corner of College Boulevard and El Camino Real (known as the Walmart site) may be able to accommodate high density residential such as R-30, R-35 or R-40.
- Other sites to consider could include Ponto and vacant land across from The Forum.
- It should be noted that the shopping center just west of The Shoppes already has an application on file to convert commercial property to residential.

This methodology could generate around 200 to 500 units that would qualify under the lower-income category, depending upon the density selected.

- Potential benefits
 - Sites are generally close to neighborhood goods and services.
- Possible drawbacks
 - Not always near local jobs centers
 - Loss of sales tax generating land

Rezoning select industrial properties to residential

Under the current general plan, there are numerous industrial lots that have remained vacant since their original grading (Exhibit 7). Only industrial properties free of constraints (i.e., airport, incompatible industrial uses, fire prevention concerns) would be considered under this methodology.

- Many of the sites are east and west of Melrose Drive
- One underutilized site along Cougar Drive and Palmer Way just east of El Camino Real.

Together, the vacant industrial sites total almost 50 acres. City staff recommend rezoning certain properties from planned industrial to R-30, R-35 or R-40 residential with a minimum density of 26.5, 32.5 and 37.5, respectively.

It should be noted that the owner of a vacant property off Palomar Airport Road has an application already on file to convert a planned industrial zoned parcel to R-30 residential use. This site was considered as a possible housing site in the last Housing Element update cycle, but was not changed. This methodology could generate more than 1,000 units that could qualify under lower income category.

- Potential benefits
 - Virtually all sites being considered are vacant and unconstrained, thereby resulting in a high number of units
 - Provides housing near job centers.
- Possible drawbacks
 - While free from constraints, still located near industrial areas
 - Not always convenient to neighborhood goods and services
 - Loss of land in areas where jobs are created

Housing Element Advisory Committee

On Sept. 10, 2019, the City Council established the Housing Element Advisory Committee, a nine-member committee³ made up of City of Carlsbad residents charged with the oversight of the Housing Element update effort. At its Aug. 12, 2020, meeting staff presented members the information contained in this report. Following member discussions, the committee recommended a different priority for the methodologies than that chosen by staff. The chart below compares the rankings.

Staff and Housing Element Advisory Committee priority rankings		
Methodologies to meet housing need	Staff	HEAC
Change assumption about how many units will be built	1	1
Increase units allowed on properties that already allow housing	2	5
Projects already proposed that require rezoning not yet approved	3	4
Rezone city-owned properties	4	2
Convert some commercial property to residential use	5	3
Convert some industrial to residential uses	6	6

During deliberations and discussions, committee members made several comments and raised concerns that led to their recommended prioritization, which are summarized as follows:

- Overall concern that up zoning lower density residential properties to allow for higher density development could adversely impact existing lower density neighborhoods.
- While R-35 and R-40 could generate more units on a site, the idea of four and five story structures may affect views.
- Higher densities (R-35 and R-40) and taller buildings may be more appropriate on major thoroughfares where bulk/scale is not an issue and the road network can handle higher traffic volumes.
- Concerns that residential use in industrial areas may result in conflicts; but they also found value in an increased work/housing balance.
- Proposed projects that included a rezone seemed logical (willing property owner to take on higher density housing, project already in vetting process).

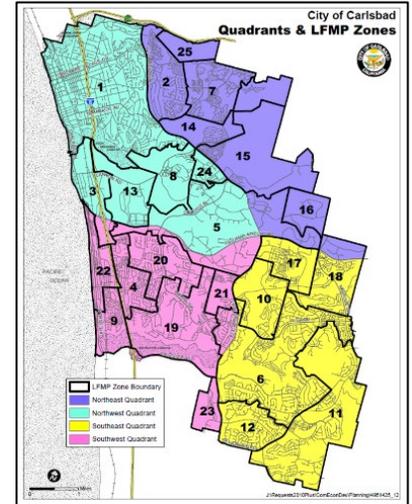
Overall, the committee (and staff) recognized that no one methodology will be able to address the RHNA requirements and that it will likely take a combination of methodologies to meet our

³ Four representatives from existing city commissions, one resident from each city quadrant, and one at-large member.

targets. The committee also recognized that the methodologies involving up-zoning residential properties and rezone industrial properties could be supported given certain site characteristics.

The Growth Management Plan

There are limits on housing in the Growth Management Plan, which was passed by voters in 1986 as Proposition E. The ideology behind the plan is to ensure that new development and growth do not outpace the performance standards established for public facilities such as roads, parks and emergency services. New development must be measured against the plan’s standards and show that they comply with the requirements before being approved. Among other things, the plan established the maximum number of homes that can be built in the city, referred to as the growth cap. To ensure even distribution of housing development, the city was divided into quadrants with each quadrant assigned a portion of the city’s growth cap, referred to as quadrant caps. Under the plan, once a quadrant reaches its assigned cap, the city is precluded from approving any further housing development in that quadrant.



Housing Crisis Act of 2019

A recent state law prohibits a city’s ability to place a moratorium on development. Senate Bill 330, the Housing Crisis Act of 2019, took effect on Jan. 1, 2020, and imposed new permitting regulations for housing that greatly limit public agencies’ ability to deny housing developments. As it relates to the city’s efforts to update its housing plan, SB 330 prohibits any laws that act as a cap on the number of housing units that can be approved or constructed. SB 330 goes on to prohibit a city from enforcing laws that have the effect of imposing a moratorium or similar restriction or limitation on housing development. On Jan. 21, 2020, an overview of the impacts of SB 330 were provided at a joint special meeting of the City Council, Planning Commission, Housing Commission, Traffic & Mobility Commission, and Housing Element Advisory Committee (Exhibit 8). On Aug. 4, 2020, the city sent a letter to the state Department of Housing & Community Development requesting an opinion of the enforceability of the city’s growth cap under SB330 on the housing element update (Exhibit 9). As of the writing of this staff report, staff has not received a response. The act will expire Jan. 1, 2025, unless extended by the legislature.

Impact on the city’s housing and growth management plans

The chart below provides a status of the citywide and quadrant caps, considering existing development and planned growth. If the net RHNA target of 1,589 units (1,354 lower income units and 235 moderate income units) remains unchanged, no quadrant could theoretically accept all the housing units and maintain consistency with the Growth Management Plan’s cap on development in a given quadrant. The Southwest Quadrant, which has a remaining GMP capacity of 1,232 additional units, has the largest remaining capacity of all quadrants.

However, the ability of this quadrant to accommodate a large number of these units is not practical given the limited number of sites available, land costs, required density, and multi-story structure type that would be required. In order to develop a new housing element that is consistent with state law, the required RHNA units will realistically need to be distributed

between the different quadrants, thereby exceeding one or more quadrant caps. Nevertheless, the overall citywide unit cap of 54,599 as approved by the voters will not be exceeded.

As the chart below reflects, 2,296 housing units remain to reach the 54,599 citywide cap. It is important to note that 1,353 of those units were removed by City Council action in 2002, leaving 943 units currently available. To plan for the net RHNA target of 1,589 units, a portion of the units removed by the City Council will need to be reinstated as part of this Housing Element update.

The chart below shows how many the residential dwelling status of each quadrant of the city:

DESCRIPTION	NORTHWEST QUADRANT			NORTHEAST QUADRANT	SOUTHWEST QUADRANT	SOUTHEAST QUADRANT	CITYWIDE TOTAL
	Outside Village	Village	Total NW				
Units built	11,839	649	12,488	7,264	10,179	16,426	46,357
Units planned	1,989	247	2,236	1,676	1,448	586	5,946
Total built/planned	13,828	896	14,724	8,940	11,627	17,012	52,303
GMP unit caps	---	---	15,370	9,042	12,859	17,328	54,599
Remaining	118	528	646	102	1,232	316	2,296

Notes: Data is current as of June 30, 2020

Total built/planned includes sites in all quadrants except the Village. It includes unbuilt approved projects, as well as vacant and underdeveloped property designated for residential use by the General Plan.

Remaining refers to dwelling unit capacity in addition to what is currently planned by the General Plan or approved as part of an unbuilt project. These remaining "potential additional dwellings" must be allocated from the Excess Dwelling Unit Bank of unbuilt units that may be used by other projects.

On June 23, 2020, following the adoption of the fy 2020-21 budget, the City Council expressed interest in holding a workshop before the end of the year to initiate discussions on how to approach an update to the city’s Growth Management Plan. Staff is targeting a City Council workshop later in the fall.

Public input

In addition to engaging the Housing Element Advisory Committee, staff sought input on potential methodologies from the community. Through an online survey, more than 3,200 respondents ranked potential methods and responded to other questions related to the housing element update.

The questions posed to the public addressed various elements of the methodologies being considered, but were geared to a lay audience. As a result, the priority methodologies identified by the public cannot be compared directly to the priorities proposed by staff and the committee. It should also be noted that although the number of respondents was very high (the highest of any city survey in recent history), the survey is not scientific. Instead it reflects the views of those who took the survey. Also, please note that the data below reflect responses through Aug. 20.

The ranking of priorities in the survey responses were:

	Ranking		Rating highest priority = 1 lowest priority = 6
Highest priority	1	At vacant industrial sites that have been converted to residential use	2.5
	2	Near commercial locations, creating "live-work" neighborhoods	2.62
	3	On lots that are underutilized (i.e., older buildings that have additional potential)	2.69
	4	On vacant land that is zoned for housing developed, but not yet developed	2.87
	5	On existing single-family properties as accessory dwelling units (granny flats)	4.08
Lowest priority	6	Areas that are already developed but could be made denser by increasing the number of housing units allowed on each piece of property	4.63

The survey also included other questions that could help inform the selection of sites for new housing in Carlsbad. A full report of the results will be available once the survey closes on Aug. 24.

Alternatives

Although there were areas of agreement among professional staff, the committee and the public, there were also significant differences. For example:

- Survey respondents did not favor accessory dwelling units as a way to help meet the city’s housing goals. Based on changes in state law, staff expect ADUs will comprise at least a portion of the city’s housing goals.
- Increasing density was the top choice among staff and the committee and the least favored among survey respondents.
- Conversely, staff and the committee ranked the conversion of industrial land to residential as the lowest priority; it was the most popular methodology among survey respondents

Staff propose developing maps showing properties that could be designated for future housing using three approaches:

- Staff’s recommended priorities
- Priorities recommended by the Housing Element Advisory Committee
- Priorities identified by survey respondents
- Any additional or different methodologies and priorities provided by the City Council

This approach will provide a variety of options that can be taken through the next phase of evaluation. This includes review and input from the Housing Element Advisory Committee and the community as well as environmental analysis.

Fiscal Analysis

Staff is requesting an allocation of additional funds in the amount of \$40,000 for a total not to exceed \$55,000 to cover costs for outside legal counsel to assist in the legal review of the city's Housing Element Update. The funding is requested from the City Council's General Fund contingency account. The City Council approved the budget for the Housing Element update on Sept. 10, 2019, when it approved a project work plan, Housing Element Advisory Committee charter and a budget carry forward⁴, and on January 28, 2020, when it approved a consultant contract for the project.

As part of that budget, \$15,000 was earmarked for outside assistance with California Environmental Quality Act and housing element law. Given the complexities of housing element law and anticipated meetings with state housing department representatives, staff recommends increasing the fund amount for legal services to a total not to exceed \$55,000.

Next Steps

City staff will apply the methods described in this report, including any new direction the City Council may wish to provide, to create a series of maps identifying various combinations of properties and approaches that will enable the city to meet state housing requirements. City staff will then contact owners of properties that could potentially be rezoned to determine interest.

The final map options will be presented to the Housing Element Advisory Committee and the public for input. They will also undergo environmental analysis to comply with the California Environmental Quality Act.

Staff will return to the City Council with the feedback and environmental analysis during a public hearing to consider approval of the final housing element and environmental impact report. These documents must be approved by April 2021 to meet the state's deadline.

Environmental Evaluation (CEQA)

The proposed action is not a "project" as defined in California Environmental Quality Act Guidelines Section 15378 because the action involves a request for guidance and direction from the city Council on the development and preparation of the city's Housing Element Update. This guidance and direction, on its own accord, will not cause significant environmental impact. As such, this activity is not subject to CEQA pursuant to Section 15060(c)(3). This determination is predicated on Section 15004 of the guidelines, which provide direction to lead agencies on the appropriate timing for environmental review. The Housing Element Update, for which this direction will help develop, will require preparation of an environmental document in accordance with State CEQA Guidelines.

Public Notification

Public notice of this item was posted in keeping with the Ralph M. Brown Act and it was available for public viewing and review at least 72 hours before the scheduled meeting date. Notice of this meeting was also posted on social media and the city's website and emailed to project

⁴ A carry forward is unspent prior-year funding reallocated to the new fiscal year for the same purpose.

stakeholders. Discussion about this item and its consideration by the City Council also occurred as part of the Housing Element Advisory Committee's Aug. 12, 2020, meeting.

Exhibits

1. Information bulletins ("How new state mandates impact Carlsbad's housing plan")
2. Map of existing eligible sites
3. Map of planned project sites
4. Map of potential residential sites for up zone
5. Map of potential city- and government agency-owned sites
6. Map of potential commercial sites considered for rezone
7. Map of potential industrial sites considered for rezone
8. January 21, 2020, City Council staff report overviewing SB 330
9. August 4, 2020 Letter to HCD on cap growth enforcement



How new state mandates impact CARLSBAD'S HOUSING PLAN

Since 1969, California has required that all cities and counties adequately plan for their share of the state's growing housing needs. While cities do not build housing – that is the function of private developers – they do adopt plans, regulations and programs that provide opportunities for how and where housing development occurs. One of the most important housing policy documents used by jurisdictions is the General Plan; more specifically, the Housing Element of the General Plan.

The General Plan serves as the “blueprint” for how a city will grow and develop and includes seven state required elements: land use, transportation, conservation, noise, open space, safety, and housing. The law mandating that housing be included as an element of each jurisdiction's General Plan is known as “Housing Element Law.”

This information bulletin outlines how the state determines housing requirements for jurisdictions, the process localities must follow to secure a certified Housing Element, and the implications for failing to meet required state housing goals.

I. THE REGIONAL HOUSING NEEDS ASSESSMENT

The California Department of Housing & Community Development is responsible for developing state housing production goals. These goals represent the total number of housing units to be built within an eight year housing cycle for varying income groups. This process is referred to as the Regional Housing Needs Assessment.

Once the RHNA is determined, HCD assigns the RHNA figures to the 21 different council of governments located throughout the state, who in turn assign the housing goals to their respective member cities and counties. Carlsbad's COG is the San Diego Association of Governments, who represents 18 cities and the County of San Diego.

The RHNA is developed by HCD and distributed to the individual cities and counties by the COGs in accordance with four state directed RHNA objectives:

- Plan for housing at all income levels/all jurisdictions
 - Balance jobs and housing
 - Focus development in urban areas
 - Protect rural areas, open space and habitat land
- These objectives are achieved using several regional and local factors and influences including:
- » Share of existing and projected population growth
 - » Distribution of existing households (by income)
 - » Existing and projected jobs
 - » Persons per household
 - » Opportunities and constraints for housing
 - » Availability of land suitable for development
 - » Preserved or protected lands
 - » Availability of high quality transit corridors
 - » Historic vacancy rates and loss of units
 - » Housing cost burdens
 - » Social equity adjustments

II. HOUSING BASED ON INCOME CATEGORIES

Under Housing Element Law, RHNA is assigned to four income groups or categories. Families with...

- Very low household income
- Low household income
- Moderate household income
- Above moderate household income

The household income for each of these categories is based on a percentage of the Area Median Income, as reflected in the chart below.

Income Category	Percent of AMI
Very Low	<50%
Low	51 to 80%
Moderate	81 to 120%
Above Moderate	>120%

These percentages are applied to the AMI for a region, not a specific city. Carlsbad falls under the AMI for San Diego County, which is currently \$86,300 per year for a four-person household. In comparison, Carlsbad's median income is at \$107,600. The income categories pursuant to the San Diego County AMI is reflected in the table below for a family of four:

Income Category	Percent of AMI	Household
Very Low	<50%	\$53,500
Low	51 to 80%	\$85,600
Moderate	81 to 120%	\$103,550
Above Moderate	>120%	>\$103,550

III. DENSITY AND AFFORDABILITY

The foundation of Housing Element Law is based on the premise that density is a proxy for affordability. The idea being, the more housing units on a site (density) translates to lower construction costs per unit, which translates to lower rental/sale prices of those units (affordability). As such, HCD assigns minimum density figures to each income category as reflected below.

Income Category	Percent of AMI	Minimum Density ¹
Very Low	\$53,500	30 du/ac
Low	\$85,600	30 du/ac
Moderate	\$103,550	15 du/ac
Above Moderate	>\$103,550	<15 du/ac

¹ du/ac = Dwelling unit per 1 acre of land

Most cities and counties can attest that higher density development alone rarely translates to housing that is affordable at the targeted income categories. As such, the state requires that cities develop and implement programs that will help facilitate affordable housing sales/rental costs (i.e., inclusionary housing requirements, locally-funded subsidies), but the programs cannot be too onerous as to make the housing development infeasible to construct (i.e., require that all higher-density projects be restricted as affordable).

Until state law changes, this is the formula that cities and counties must use when planning for housing under state Housing Element Law.



IV. THE LOCAL HOUSING ELEMENT

Once a jurisdiction receives its RHNA allocations, it must update its General Plan and Housing Element to demonstrate how the jurisdiction, particularly through policies and zoning, can or will accommodate the RHNA. Generally, a Housing Element must include the following:

- Review of previous Housing Element
- Assessment of housing needs
- Inventory and analysis of adequate sites
- Analysis of potential constraints
- Housing policies and programs
- Quantified objectives

One of the most labor intensive and controversial components of the process is the inventory and analysis of adequate sites.

Each jurisdiction must evaluate the Land Use Element of their General Plan to determine whether there is enough land available, with adequate zoning (minimum density as described in Section III), to accommodate their assigned RHNA allocation for each income category. If unable to accommodate the housing goals, the jurisdiction must rezone enough land to meet the RHNA obligation.

In addition to adequately zoning sites, the law requires that each jurisdiction look for ways to streamline permit processes and remove processing barriers in order to facilitate the creation of affordable housing.

A ministerial process with reduced fees and development incentives (i.e., increased density above plan allowance, waiver of design standards like parking or setbacks, expedited permit review) for affordable housing projects is highly encouraged by HCD.

Ultimately, an effective Housing Element provides the necessary conditions for developing and preserving an adequate supply of housing, including housing affordable to seniors, families, and workers.

The update plan provides the opportunity to develop housing and land use strategies to reflect local changing needs, resources, and conditions and provides a vehicle to adopt approaches addressing state driven regulations related to sustainability and environmental concerns. Jurisdictions may also use the Housing Element as an opportunity to complement their economic development goals with their housing goals.

V. HCD HOUSING ELEMENT CERTIFICATION

Once updated, Housing Elements must be reviewed and approved by HCD and then adopted by the local jurisdiction (City Council) prior to state mandated deadlines (described in Section VIII). Failure to timely complete this process will result in several penalties, as highlighted in the section below.

VI. PENALTIES FOR NONCOMPLIANCE & LIMITATIONS

Failing to meet the state requirements can result in significant penalties. Given the current housing crisis in California, each year the state legislature introduces new laws that increase and expand the penalties for noncompliance as well as impose limitations on local controls affecting housing production. Below are a few of the more significant State acts.

Housing Accountability and Affordability Act

If HCD finds that a jurisdiction's RHNA goals are not being timely satisfied, SB 35 requires cities and counties to streamline review and approval of eligible affordable housing projects by providing a ministerial approval process, exempting such projects from environmental review under CEQA and public hearing process. Refer to the City Info Bulletin on this act.

Building Homes and Jobs Act

Under Senate Bill 2, jurisdictions that do not have an approved HCD certified Housing Element are not eligible for grant funding. Carlsbad's current housing element is HCD certified, which allowed the city to apply for and be awarded an SB 2 grant in the amount of \$310,000.

Housing Development and Financing Act

Under Assembly Bill 101, jurisdictions failing to timely adopt a local Housing Element may be fined tens of thousands of dollars per month until HCD determines compliance.

Housing Crisis Act

SB 330 introduces an even more expedited review process for residential development projects than SB 35 and prohibits cities from imposing growth caps or moratoriums on housing projects or plans. This will likely impact how we can implement Carlsbad's Growth Management Plan.

Residential Density and Affordability Act

Under SB 166, a city cannot reduce residential density on a property without concurrently rezoning another property to make up the lost units. Furthermore, if a city approves a project that results in a density lower than the housing plan identified, it must rezone another property to make up the difference.

Potential lawsuits

Many cities without an approved Housing Element have been sued by developers and/or affordable housing advocates, resulting in decisions unfavorable to the city. For example:

- ✓ Courts have suspended a jurisdiction's local land use authority via a court ordered moratoria; the city was unable to issue building permits until a Housing Element was certified and approved. (City of Pasadena)
- ✓ Courts have assumed land use control over all housing development permits. Under this scenario, the courts could approve a housing development project that may not fit the character of the community. (City of Fremont)
- ✓ Courts have imposed aggressive timelines for a jurisdiction to approve a Housing Element (with threats of court-assumed land use control for noncompliance), thereby limiting community input in the housing plan development. (City of Encinitas)
- ✓ The State Attorney General has filed suit against cities that do not have an approved or compliant Housing Element. The implications of the lawsuits are currently unknown. (City of Huntington Beach)
- ✓ In virtually all cases, the litigation resulted in the city paying significant financial penalties and/or substantive attorney fees.



VII. RELATED STATE HOUSING PROGRAMS/LAWS

Beyond the mandates required under the Housing Element Law, the state has adopted other regulations and programs that encourage housing production.

State Density Bonus Law

Density Bonus is a state law that allows a developer to increase density beyond that allowed under a city's local land use plan. An applicant can also receive reductions in required development standards such as setbacks, height limits and parking requirements. In exchange for the increased density, a certain number of the new homes must be reserved for very low, low, or moderate-income households or for seniors.

Accessory Dwelling Units

The state has found that allowing Accessory Dwelling Units in residential zones where primary residences are already allowed provides additional housing throughout California. In recent years the state has continued to revise and update the programs around ADUs, limiting local city control of them, to more widely allow for ADUs to address housing production. Refer to the city informational bulletin on ADUs.

VIII. 2021-2029 HOUSING CYCLE

The RHNA process for the next (sixth) Housing Element cycle is currently in process and will cover the period from April 2021 – April 2029. The RHNA process can be generally categorized into the steps bulleted below.

It is important to note that the RHNA process is also being conducted in conjunction with the development of the 2050 Regional Transportation Plan and its Sustainable Communities Strategy in accordance with SB 375 (See Section IX for more on this process).

RHNA Methodology and Allocation

July 2018 – November 2019

This step includes the development of the methodology in which RHNA will be distributed by SANDAG. Public review of the draft methodology was completed in September 2019, with HCD approval in November 2019. Currently, city staff coordinates and collaborates with the SANDAG and regional jurisdictions through its participation in the SANDAG RHNA Subcommittee meetings.

RHNA Distribution and Allocation

November 2019 – February 2020

Distribution of the draft RHNA to local jurisdiction occurred in November 2019. In January 2020 the following four jurisdictions filed appeals on the RHNA allocation: Coronado, Imperial Beach, Lemon Grove and Solana Beach. Results of the appeal are pending.

Certified Local Housing Element

February 2020 – April 2021

Each city and county has until April 2021 to process a Housing Element update using their assigned RHNA allocation (this period includes HCD review and City Council adoption).

IX. REGIONAL TRANSPORTATION PLAN AND SUSTAINABLE COMMUNITIES STRATEGY

The Regional Transportation Plan is a federally required long range transportation plan prepared by SANDAG that is updated every four years, and includes projections of population, household, employment growth and travel demand, along with a specific list of proposed projects to be funded. In Carlsbad, the following local projects are included in the RTP:

Carlsbad Boulevard realignment

- Village/Barrio roundabouts
- Road extensions for College Boulevard and Poinsettia Lane
- Road widenings for El Camino Real
- Road widenings for Avenida Encinas
- Other improvements at various locations:
 - » Intersection improvements
 - » Turn lane improvements
 - » ADA improvements
 - » Complete street improvements
 - » Traffic signal system improvements
 - » Pedestrian and bicycle improvements
 - » Lighting improvements
 - » Pavement management program

Pursuant to SB 375, SANDAG must also develop a Sustainable Communities Strategy to integrate land use and transportation strategies that will achieve California Air Resources Board greenhouse gas emissions reduction targets.

The SCS must demonstrate on a regional level, those areas sufficient to house all the population of the region, including the eight year projection of the RHNA. Both the RTP/SCS and RHNA have used local input as the basis for future demographic projections, including household growth.



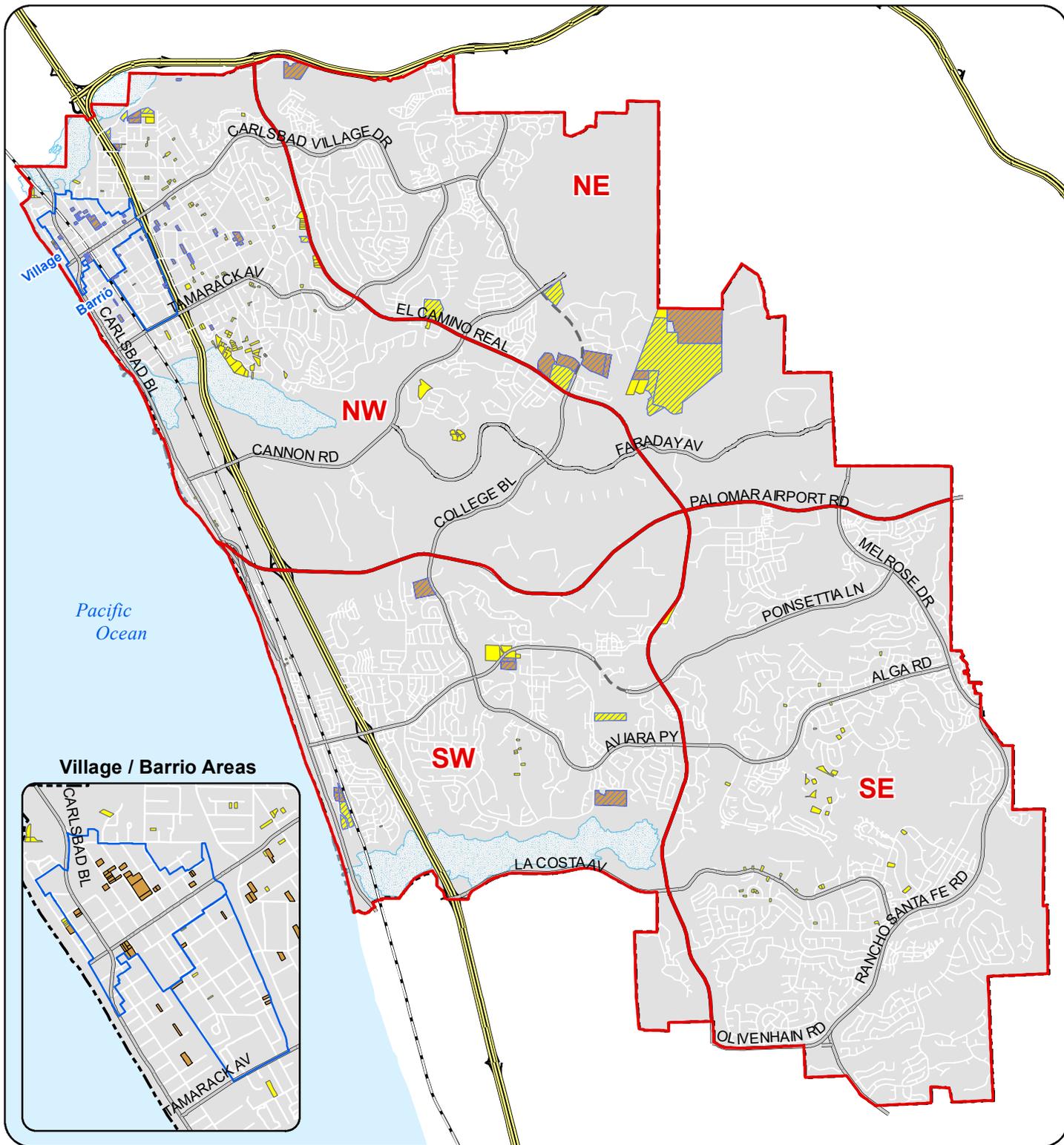


Exhibit 2: Existing Eligible Sites

- Vacant (Residential)
- Underutilized
- Quadrants
- Split GP Designation
- Village & Barrio Master Plan
- Existing Major Road
- Future Major Road
- Local Roads (White)
- City of Carlsbad



0 0.5 1 2 Miles

Sources: City of Carlsbad, 2020; Mintier Hamish 2020

Revised: 8/11/2020

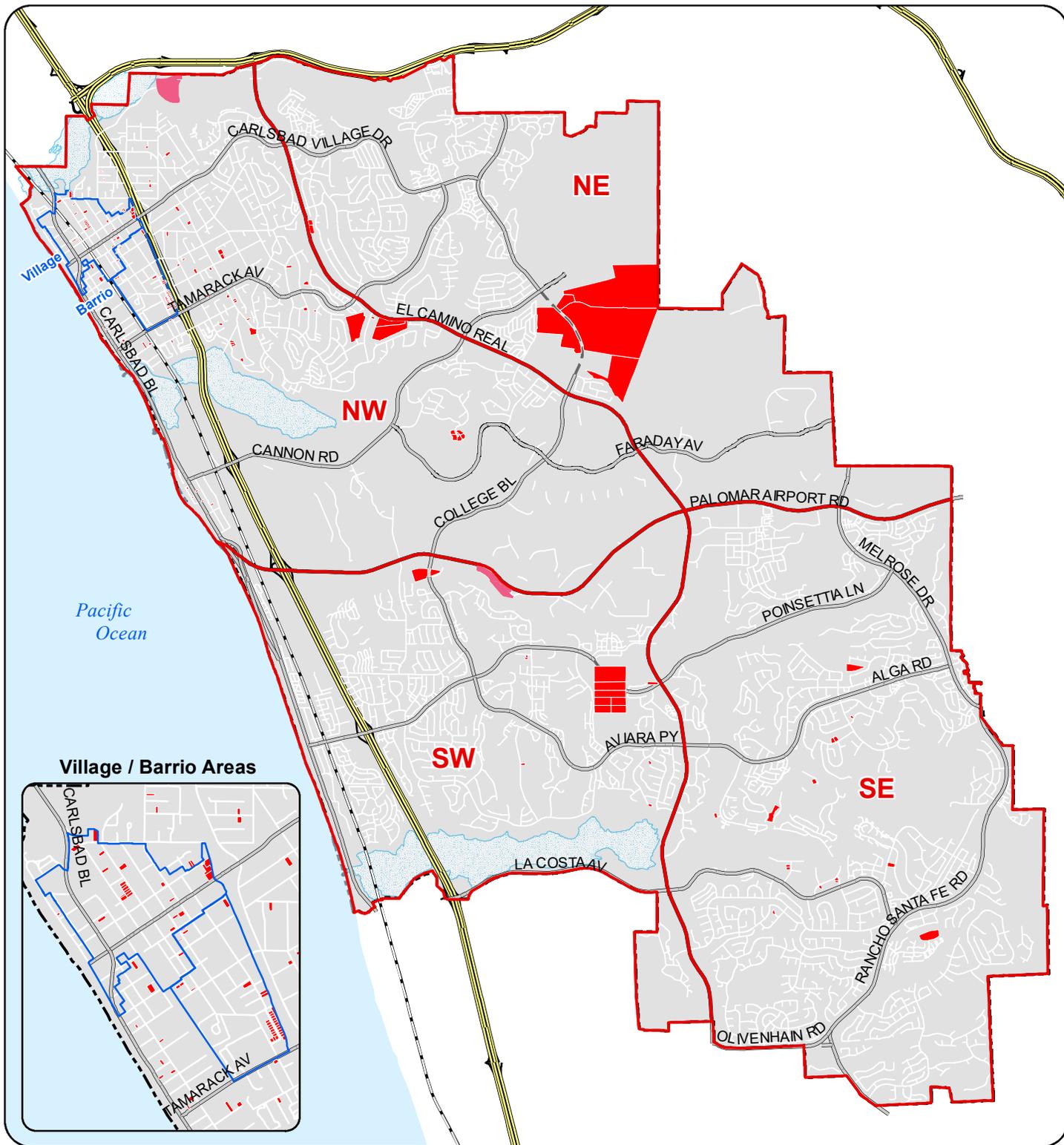


Exhibit 3: Map of Planned Project Sites

- Planned Projects
- Other Planned Projects
- Quadrants
- Village & Barrio Master Plan
- Existing Major Road
- Future Major Road
- Local Roads (White)
- City of Carlsbad



0 0.5 1 2 Miles

Sources: City of Carlsbad, 2020; Mintier Hamish 2020
Revised: 8/11/2020

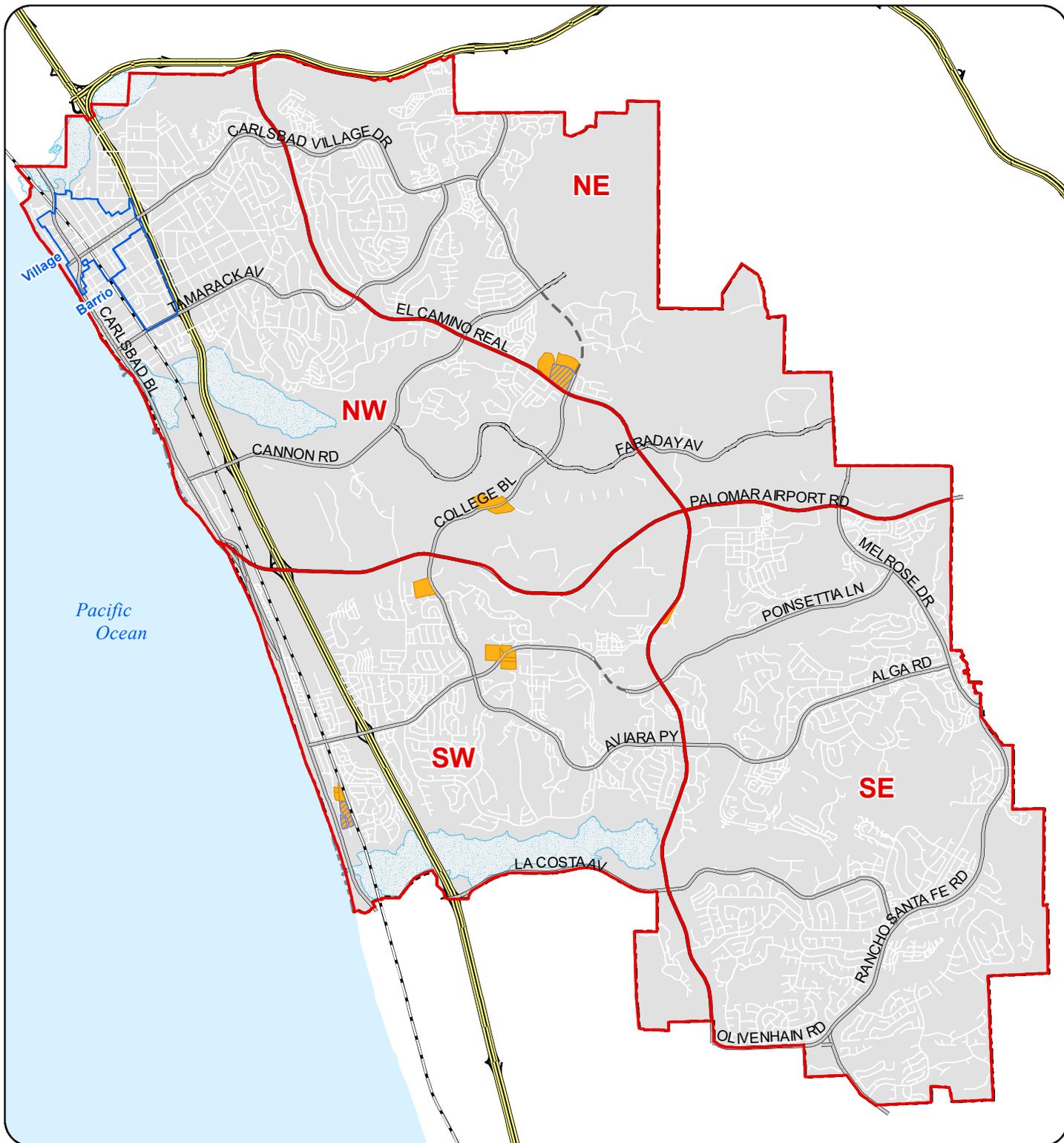
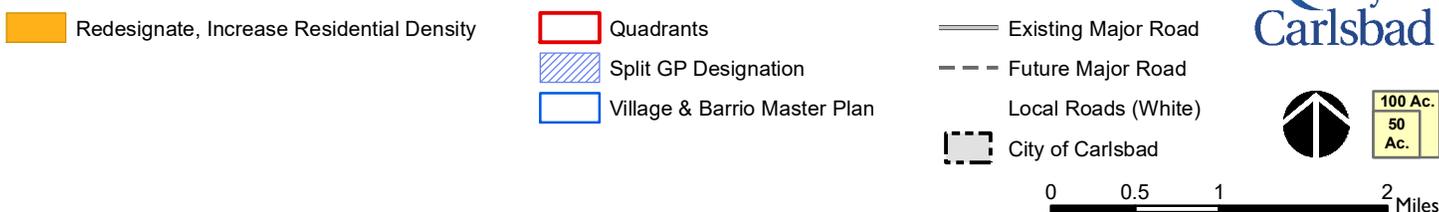


Exhibit 4: Map of Potential Residential Sites for Up Zone



Sources: City of Carlsbad, 2020; Mintier Hamish 2020

Revised: 8/11/2020

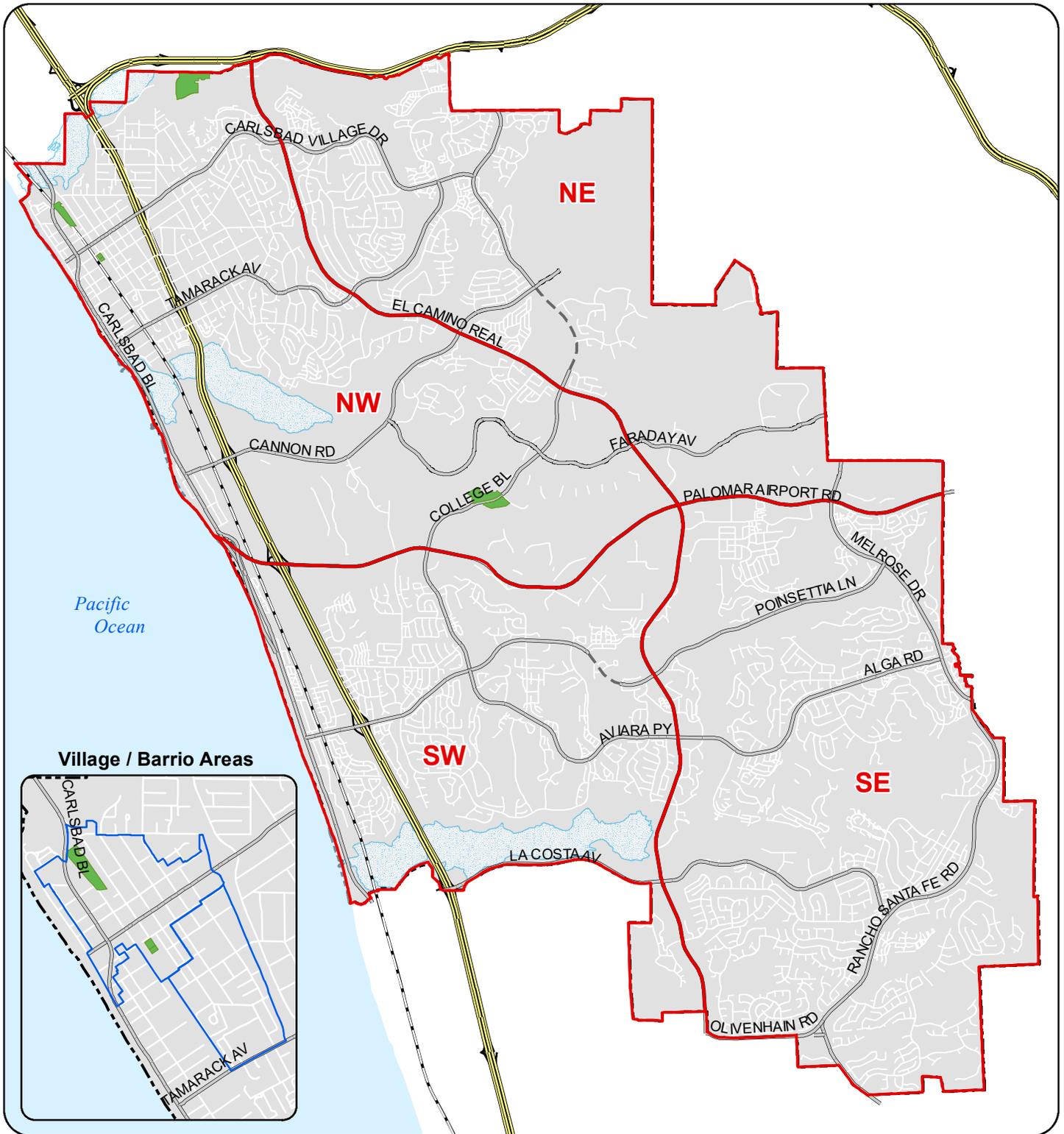


Exhibit 5: Map of City-Owned/Government Agency-Owned Sites

- City-Owned/Gov't Agency Owned
- Quadrants
- Existing Major Road
- Future Major Road
- Local Roads (White)
- City of Carlsbad



0 0.5 1 2 Miles

Sources: City of Carlsbad, 2020; Mintier Hamish 2020

Revised: 8/12/2020

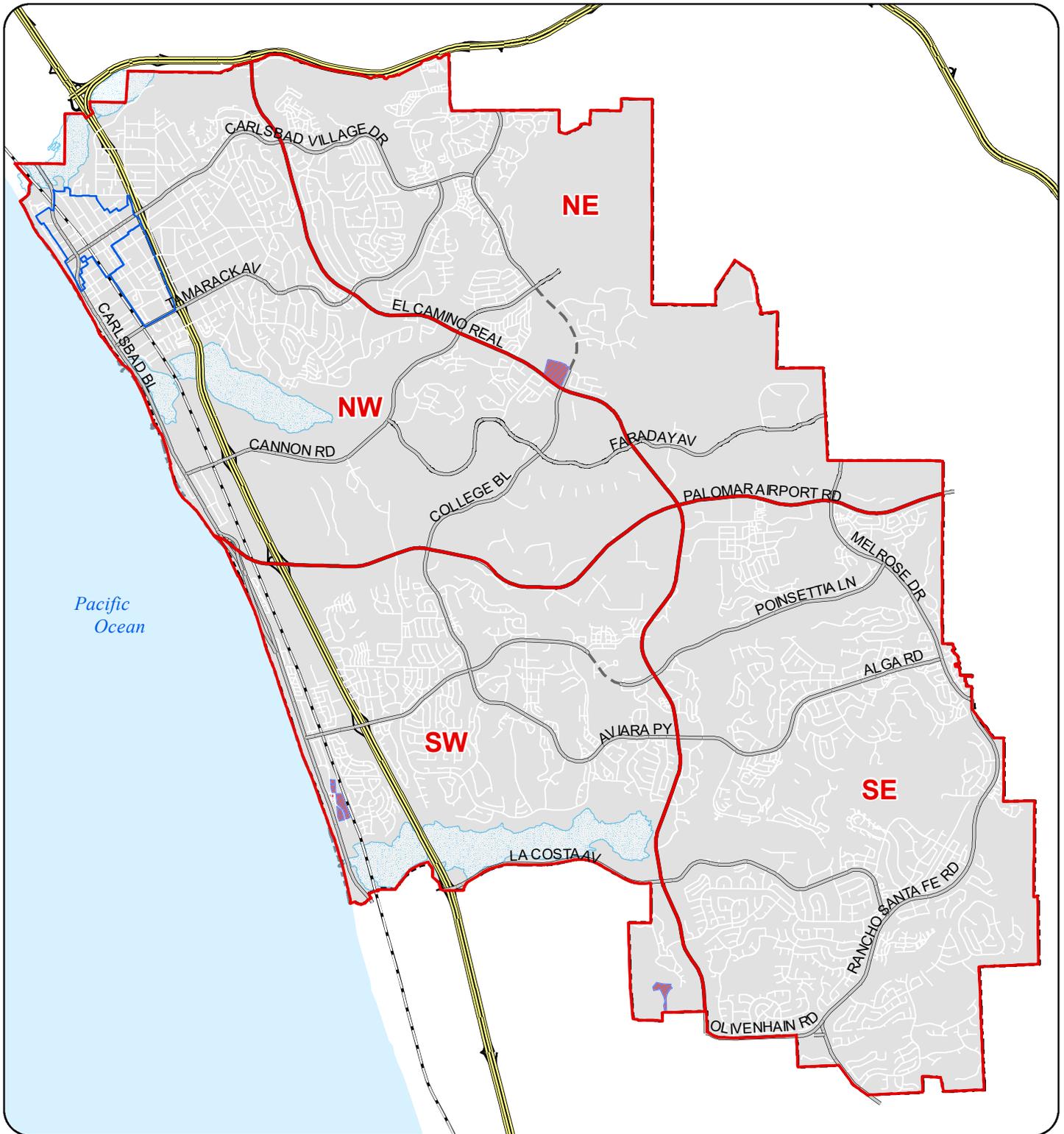


Exhibit 6: Map of Potential Commercial Sites Considered for Rezone

- Redesignate Commercial
 - Quadrants
 - Split GP Designation
 - Village & Barrio Master Plan
- Existing Major Road
 - Future Major Road
 - Local Roads (White)
 - City of Carlsbad



Sources: City of Carlsbad, 2020; Mintier Hamish 2020

Revised: 8/11/2020

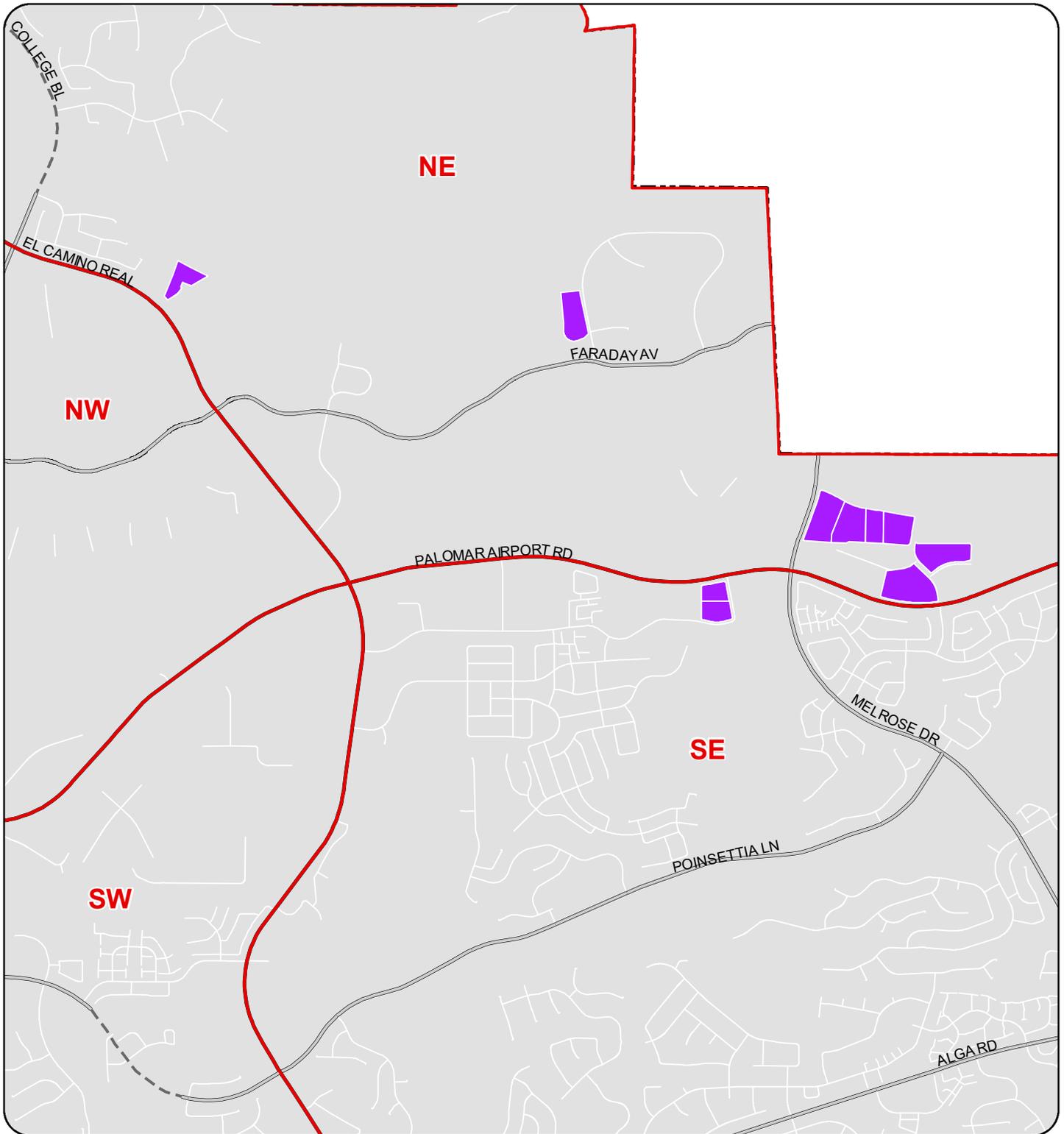


Exhibit 7: Map of Potential Industrial Sites Considered for Rezone

- Redesignate, Industrial -> Residential
- Quadrants
- Existing Major Road
- Future Major Road
- Local Roads (White)
- City of Carlsbad



0 1,000 2,000 4,000 Feet

Sources: City of Carlsbad, 2020; Mintier Hamish 2020

Revised: 8/11/2020



Joint Special Meeting of the City Council, Planning Commission, Traffic & Mobility Commission, Housing Commission & Housing Element Advisory Committee

Staff Report

Meeting Date: January 21, 2020

To: Mayor and City Council

From: Scott Chadwick, City Manager

Staff Contact: Celia Brewer, City Attorney
760-434-2891

Subject: Overview of SB 330: Housing Crisis Act of 2019 and New Regulations on Accessory Dwelling Units

Recommended Action

Receive a presentation regarding SB330: Housing Crisis Act of 2019 and New Regulations on Accessory Dwelling Units.

Executive Summary

The City Attorney has worked with The Sohagi Law Group, PLC to prepare the attached memo regarding SB 330: Housing Crisis Act of 2019 and New Regulations on Accessory Dwelling Units. Margaret and Tyson Sohagi will be presenting this information to the City Council and responding to questions.

Fiscal Impact

No funding is being requested at this time.

Environmental Evaluation (CEQA)

Pursuant to Public Resources Code section 21065, this action does not constitute a "project" within the meaning of CEQA in that it has no potential to cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and therefore does not require environmental review.

Public Notification and Outreach

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to scheduled meeting date.

Exhibits

1. Memo re SB 330: Housing Crisis Act of 2019 and New Regulations on Accessory Dwelling Units



January 16, 2020

To: MAYOR AND CITY COUNCIL

From: CITY ATTORNEY

Subject: OVERVIEW OF SB 330: HOUSING CRISIS ACT OF 2019 AND NEW REGULATIONS ON ACCESSORY DWELLING UNITS

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City Attorney

1200 Carlsbad Village Drive | Carlsbad, CA 92008 | 760-434-2891 | 760-434-8367 fax | www.carlsbadca.gov

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I. SUMMARY

A. Senate Bill 330

Senate Bill 330 (Skinner) (SB 330),¹ entitled the Housing Crisis Act of 2019 (“Act”), took effect on January 1, 2020 and adopts new permitting regulations for housing that limit public agencies’ ability to deny housing developments. The Act will sunset January 1, 2025 unless extended by the Legislature.

The primary purpose of the bill is to expedite construction of new housing. The Legislature has declared that California needs an estimated 180,000 additional homes annually to keep up with population growth and that the Governor has called for 3.5 million new homes to be built over the next seven years (500,000 new homes annually). This substantially exceeds recent housing development in California, which has averaged less than 80,000 homes annually over the last ten years.² The consequences of providing inadequate housing has resulted in a lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, air quality deterioration, and increasing greenhouse gas emissions from longer commutes to affordable homes far from growing job centers. (Gov. Code, § 65589.5; HCD Final Statewide Housing Assessment.) To accomplish the goal of expediting housing development, SB 330 creates a number of new procedures and legislative limitations on municipalities.

Where housing is an allowable use, the City is prohibited from enacting a law³ that would have the effect of “imposing a moratorium or similar restriction or limitation on housing development” except to protect against an imminent threat to the health and safety of persons in the area.

SB 330 also precludes amending development regulations to a less intensive residential use in comparison to those in place on January 1, 2018. However, there are several exceptions to this limitation, including concurrently adopted changes that ensures there is no net loss in residential capacity.

¹ Senate Bill 330 complete text:
https://leginfo.Legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB_330.

² HCD Final Statewide Housing Assessment 2025: https://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA_Final_Combined.pdf.

³ This includes general plan amendments, specific plan amendments, zoning amendments, or a subdivision standard or criterion. (Gov. Code, § 66300(a)(5).)

SB 330 also prohibits enactment of a law “establishing or implementing any provision that: (i) limits the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the...city,” (ii) “acts as a cap on the number of housing units that can be approved or constructed either annually or for some other time period,” or (iii) limits the population of the affected city. (Gov. Code, § 66300(b)(1)(D).)

There are several administrative actions the City will need to take in the short term to implement SB 330’s new provisions. These include (1) preparation of a new preliminary application process (Section II.E), (2) an updated development application process (Section II.E and II.F), and (3) historic resource determinations (Section VI.G).

B. Accessory Dwelling Units

The Legislature also passed new laws governing accessory dwelling units (ADUs) that restrict a city’s ability to regulate these units. Effective January 1, 2020, all ADU approvals, including what are called Junior ADUs are ministerial in nature and are not subject to public hearing. The City must allow ADUs in single family and multiple family zones subject to limited exceptions. The City can impose certain standards on the ADUs including parking, height, setback, landscape, architectural review, maximum size of units, lot coverage requirements and the like. However, there are categories of ADUs proposed in residential and mixed use zones that the City *must* approve including 1) one ADU or Junior ADU on a single family lot with an existing or proposed single family residence, subject to certain conditions, 2) one detached, newly constructed ADU that does not exceed 4-foot side and rear yard setbacks and 16 feet in height, 3) multiple ADUs no larger than 800 sq. ft. within areas of existing multiple dwelling structures such as garages and attics, and 4) up to two ADUs detached from an existing multiple family dwelling structure with a 16-foot height limit and 4-foot side and rear yard setbacks. The City may not require correction of nonconforming zoning conditions as a condition for these mandatory ADU approvals. In all cases, the City may require compliance with applicable Building Code requirements.

II. SB 330 REQUIREMENTS

A. Background of SB 330

SB 330 amends the State Housing Accountability Act (Gov. Code, § 65589.5) and adopts new Government Code sections to create new permitting regulations for housing that limit public agencies’ ability to deny housing developments. SB 330 was approved by the Governor on October 9, 2019 and took effect on January 1, 2020, with most of the bill set to expire on January 1, 2025, unless extended by the Legislature.

In enacting SB 330, the Legislature formally declared there is a statewide housing emergency. The Legislature further declared that in light of the severe shortage of housing at all income levels in the state, providing adequate housing is a matter of statewide concern such that SB 330 applies to all cities, including charter cities such as the City of Carlsbad. SB 330 is intended to be broadly construed to maximize the production of housing with exceptions limiting housing construed narrowly. (Gov. Code, § 66300(f)(2).)⁴

SB 330's requirements generally apply to "housing development projects," which include residential projects, mixed use projects where at least two thirds of the square footage is designated for residential use, and transitional housing⁵ and supportive housing.⁶ (Gov. Code, § 65589.5(h)(2).) Many of the new substantive limits also apply to voter sponsored initiatives. (Gov. Code, § 66300(a)(3).) The following sections summarize the key components of SB 330.

B. Moratorium Limits

SB 330 creates new procedures that are applicable to a "moratorium or similar restriction or limitation on housing development, including mixed-use development..." (Gov. Code, § 66300(b)(1)(B)(i).) Moratoria generally refers to a temporary ban on types of development or land uses. Specifically, where housing is an allowable use, the City is

⁴ In addition, none of the provisions in Government Code § 66300 are to be construed to limit or prohibit a development policy that allows greater density, facilitates housing development, reduces housing costs or imposes/implements mitigation measures pursuant to CEQA. (Gov. Code, § 66300 (f)(3).)

⁵ "Transitional housing" means buildings configured as rental housing developments, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance. (Gov. Code, §§ 65582(j), 62253; Health & Saf. Code, §§ 50675.2(h), 50801(i).)

⁶ "Supportive housing" means housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community. (Gov. Code, § 65650; Health & Saf. Code, § 50675.14(b)(2).)

prohibited from enacting a “development policy, standard or condition”⁷ that would have the effect of “imposing a moratorium or similar restriction or limitation on housing development...other than to specifically protect against an imminent threat to the health and safety of persons residing in, or within the immediate vicinity of, the area subject to the moratorium...” (*Id.*) While “imminent threat” is not defined in SB 330, imminent is generally defined as “likely to occur at any moment, impending,” “ready to take place: happening soon; menacingly near,” or “threatening to occur immediately; dangerously impending.”⁸ This provision is more stringent than the existing moratorium provision under Government Code § 65858(c),⁹ which requires a finding that “there is a current and immediate threat to the public health, safety or welfare... .”

Such a moratorium or similar restriction on housing development is not enforceable until it has first been submitted and approved by the California Department of Housing and Community Development (HCD). If HCD does not approve the moratorium, the moratorium is deemed void. (Gov. Code, § 66300(b)(1)(B)(ii).)

As the City embarks on implementing SB 330, one question that arises is the relationship between SB 330 and the City’s Growth Management Plan (Proposition E, the Growth Management Program and implementing regulations, collectively “GMP”: <https://carlsbadca.gov/news/growth/default.asp>.) The GMP states that the City shall not approve a general plan amendment, zone change, tentative subdivision map or other discretionary approvals for a development that could result in development above the dwelling unit limit in any quadrant. Another provision of the GMP provides that if the performance standards established by a local facilities management plan are not met, then no development permits or building permits shall be issued within that zone until the performance standard is met or arrangements satisfactory to the city council guaranteeing the facilities and improvements have been made. (CMC §§ 21.90.045(2), 21.90.080, see also exceptions: § 21.90.030.)

These provisions essentially call for a moratorium to be enacted under certain circumstances. Whether a moratorium under the GMP meets the new criteria for moratoria under SB 330, namely an “*imminent threat to the health and safety of persons residing in, or within the immediate vicinity of, the area subject to the moratorium,*” is

⁷ “Development policy, standard or condition” includes general plan amendments, specific plan amendments, zoning amendments, or a subdivision standard or criterion. (Gov. Code, § 66300(a)(5).)

⁸<https://www.dictionary.com/browse/imminent?s=t>.

⁹ See also Government Code, §§ 36934, 36937.

an open question. The answer may depend upon the specific factual situation, including the performance standard at issue, whether there are impending development applications, and whether there are any specific imminent threats to public health and safety as a result of exceedances of the GMP performance standards.

C. Limitations on Regulations for Housing Permits

SB 330 prohibits enactment of “a development policy, standard or condition...establishing *or implementing* any provision that: (i) limits the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the...city,” (ii) “acts as a cap on the number of housing units that can be approved or constructed either annually or for some other time period,” or (iii) limits the population of the affected city. (Gov. Code, § 66300(b)(1)(D).) While there are certain exceptions to this new prohibition, none apply to the City of Carlsbad.¹⁰

These housing cap limitations raise questions regarding the ability of the City to enforce (1) its residential “quadrant limits” contained in the GMP, (2) its Growth Management Control Points, and (3) its population density standards.

D. Legislative Limits on Reducing Residential Density Below that Allowed on January 1, 2018

Where housing is an allowable use, SB 330 generally precludes the City from amending its general plan/specific plan land use designations or zoning to a *less intensive use* in comparison to those in place on January 1, 2018. “[*Less intensive use*” includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing.” (Gov. Code, § 66300(b)(1)(A).)

¹⁰ Government Code § 66300(b)(1)(E) provides the explicit exceptions to these provisions; however, these exceptions are inapplicable to the City of Carlsbad. This subsection exempts regulations adopted before 2005 where the City is located in a “predominantly agricultural county.” The exceptions listed under Government Code § 66300(g) are likely also inapplicable. More specifically, this subsection states that § 66300 “shall not be construed to void a height limit, urban growth boundary, or urban limit established by the electorate, provided [the regulations are not less intense than the development limits in place on January 1, 2018].”

There are exceptions to this limitation, including (1) concurrently adopted changes in other development standards, ensuring no net loss in residential capacity, and (2) amendments to mobilehome park standards. (See Gov. Code, § 66300(i).)

E. New Preliminary Application Process and Prohibition on Applying New Fees and Exactions after Submittal

The City is required to create a preliminary application checklist or to utilize a standardized checklist prepared by HCD. (Gov. Code, § 65941.1(b)(2).) HCD has not yet prepared the standardized checklist and indicated that this checklist will not be available until the end of the first quarter of 2020. The checklist can only include the information provided in Government Code § 65941.1(a) (1) – (17). The City may not require any additional information in the preliminary application. (Gov. Code, § 65941.1(b)(3).)

This preliminary application is a new first step in the planning process, to be followed by the development application process already required under Government Code §§ 65940, 65941, and 65941.5; CMC § 21.42.050 [Use Permit Applications]. (Gov. Code, § 65941.1(d)(1).) The City is not required to provide an affirmative determination regarding completeness of a preliminary application. (Gov. Code, § 65941.1(d)(3).)

SB 330 precludes the City from applying any new “ordinances, policies or standards” adopted after submittal of the preliminary application for a housing development project. (Gov. Code, § 65589.5(o)(1).)¹¹ “[O]rdinances, policies, and standards” includes general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in Government Code § 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions. (Gov. Code, § 65589.5(o)(2)(E)(4).)

These limitations under Government Code § 65589.5(o)(1) overlap in part with the new limitations under Government Code § 66300(b)(1)(A). As discussed in Subsection II.D, supra, the City may not implement regulations with less intense uses than those in place on January 1, 2018, including reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage

¹¹ If the applicant revises the project’s residential density or square footage by 20% or more, the project will not have the benefits of the previously submitted preliminary application, and will have the resubmit to reflect the revisions. (Gov. Code, § 65941.1(c).)

limitations...” The primary distinction being that Government Code § 65589.5(o)(1) also applies to *fees and charges* including “development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions,” which are not addressed by the January 1, 2018 development regulation freeze under § 66300(b)(1)(A).

This project-specific freeze under Government Code § 65589.5(o)(1) is not applicable (1) to automatic annual adjustments in existing fees which are “based on an independently published cost index” (Gov. Code, § 65589.5(o)(2)(A)), (2) to measures which mitigate or avoid a specific, adverse impact upon the public health or safety (Gov. Code, § 65589.5(o)(2)(B)), (3) to measures to mitigate an impact under CEQA (Gov. Code, § 65589.5(o)(2)(C)), or (4) if more than two and a half years have passed since the final approval of the project (Gov. Code, § 65589.5(o)(2)(D)).

F. New Development Application Requirements

In addition to the creation of the preliminary application process discussed in the Subsection II.E, *supra*, the City is required to update its development application contents to include the information necessary to determine compliance with Government Code § 66300(d). (Gov. Code, § 65940(a)(2).)

This primarily affects projects involving the demolition or removal of existing housing, including, but not limited to, information on the number of dwelling units being removed, whether any dwelling units meet the definition of a “protected unit” (Gov. Code, § 66300(d)(2)(E)(ii)), whether any dwelling units were subject to rent or price control, and whether any dwelling units are for rent. SB 330 does not provide an explicit checklist; consequently, the City may wish to request information as follows:

Any information necessary to determine compliance with Government Code § 66300(d), including, but not limited to, information on the number dwelling units being removed if any, whether any dwelling units meet the definition of a “protected unit” (Gov. Code, § 66300(d)(2)(E)(ii)), whether any dwelling units were subject to rent or price control, and whether any dwelling units are for rent.

The primary purpose of this question is to assess applicability of relocation benefits and right of first refusal outlined below in Subsection II.K of this memorandum.

Additionally, applicants are required to submit this development application within 180 calendar days from submittal of the preliminary application. (Gov. Code, § 65941.1(d)(1).)

G. SB 330 Requires the City to Provide a List of Missing Information for All Development Applications Deemed Incomplete

SB 330 requires public agencies to determine the completeness of a development application within 30 days based upon the specific contents of the application, rather than information deemed relevant by the individual planner. (Gov. Code, § 65943(b).) If the City does not make this determination within 30 days, the application is automatically deemed complete.

If a project application submitted pursuant to Government Code § 65940 is determined to be incomplete, the City is required to provide the applicant with a list of items that were not complete. (Gov. Code, § 65943.)

The list must be limited to those items actually required on the lead agency's submittal requirement checklist. (Gov. Code, § 65943(a) and (b).) Subsequent review of materials submitted by an applicant in response to an incomplete determination must be made within 30 days of submittal, or the application is deemed complete. Furthermore, the local agency shall not request that the applicant provide any new information that was not stated in the initial list of items that were listed as incomplete.

SB 330 now also requires the City to make applications for housing developments available on its website. (Gov. Code, § 65943(f).) Given that the City already maintains such a website,¹² it will simply need to update these applications.

H. Prohibition on New Subjective Design Standards for Housing Development Projects

The 2018 State Housing Accountability Act previously limited the ability of public agencies to deny housing projects based upon subjective standards if the public agency had not yet met its regional housing needs allocation (RHNA). (Gov. Code, § 65589.5(d)(2).)¹³

¹² <https://www.carlsbadca.gov/services/depts/planning/applications.asp>.

¹³ Existing State Housing Accountability Act finding requirement: A local agency shall not disapprove a housing development project...unless it makes findings as to one of the following...(1) the jurisdiction has met or exceed its regional housing need allocation, or (2)...the housing development project...would have "specific, adverse impact" which "means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." (Gov. Code, § 65589.5(d)(2).)

However, SB 330 amends the Government Code to state that a “city shall *not enact a* development policy, standard, or condition that would have any of the following effects...imposing or enforcing design standards established on or after January 1, 2020, that are not objective design standards,” regardless of whether the City has met its RHNA. (Gov. Code, § 66300(b)(1)(C).) Objective design standards are defined as “involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.” (Gov. Code, §§ 66300(a)(7), 65589.5(h)(8).)

I. Historic Resource Determination

The new provisions under Government Code § 65913.10(a) require public agencies to “determine whether the site of a proposed housing development project is a historic site...at the time the application...is deemed complete.” This is *not* referring to the date of the “preliminary application,” rather, this is referring to the traditional pre-existing development application process contemplated under Government Code § 65940. (Gov. Code, § 65913.10(b)(1).) This determination shall remain valid throughout the entitlement process unless new resources are encountered during grading, site disturbance, or building alteration activities. (Gov. Code, § 65913.10(a).)

To help expedite this determination, the City will receive some historic information early on in the process through the preliminary application materials, which are required to provide information on “Any historic or cultural resources known to exist on the property.” (Gov. Code, § 65941.1(a)(9).)

Other subsections of SB 330 state that “nothing in this section supersedes, limits, or otherwise modifies the requirements of...[CEQA].” (Gov. Code, § 65913.10(c)(1).) It is unclear whether the historic resource finding under Government Code § 65913.10(a) is intended to preempt the historic resource findings under CEQA. This issue was also raised as a point of concern by numerous non-profit organizations.¹⁴

¹⁴ <https://laconservancy.tumblr.com/post/187538638850/action-alert-senate-bill-330-threatens-historic> [“With streamlining as its intent, SB 330 makes assumptions and imposes limitations that will put historic resources at risk. Because most historic resources are not formally designated or landmarked, potential resources could be missed or omitted during the accelerated approval process. Without a safeguard in place, historic places would be in jeopardy. ¶] SB 330 should clarify that streamlining the process does not eliminate the obligation of a local government to assess impacts on historic resources under their own ordinances or the California Environmental Quality Act (CEQA), even when a resource is not identified until later.

J. No More than Five (5) Hearings on a Housing Development Project

Government Code § 65905.5(a) limits the City from conducting “more than five hearings” on a housing development project that complies with applicable objective standards after an application has been deemed complete under Government Code § 65940. The City is required to make a decision approving or disapproving a project by the end of the fifth hearing. (*Id.*)

“Hearing” includes any public hearing, workshop, or similar meeting, held by the City Council, Planning Commission, or other departments. (Gov. Code, § 65905.5(b)(2).) If the City continues a hearing, the continued hearing counts as one of the five hearings. (Gov. Code, § 65905.5(a).) It is unclear whether an appeal hearing would be counted as a hearing under this new provision. Consequently, the City may want to ensure that any approvals from non-elected bodies, such as Planning Commission are approved by the fourth hearing.

This five-hearing limit is not applicable to projects that are requesting legislative approvals, such as general plan, specific plan or zoning amendments, or appeals of such amendments. (Gov. Code, § 65905.5(a) and (b)(2).)

K. Relocation Benefits and Right of First Refusal for “Protected Unit” Occupants

As discussed above in Subsection II.F, development applications must now include information on whether existing development includes protected units.

Any project that includes the removal or demolition of a “protected unit” (Gov. Code, § 66300(d)(2)(E)(ii)) is required to provide the occupants with (1) relocation benefits (Gov. Code, § 7260 et seq.), and (2) right of first refusal for a comparable unit available in the new housing development. (Gov. Code, § 66300 (d)(2)(D).) “Protected units” are generally defined by Government Code § 66300(d)(2)(E)(ii) as including residential units subject to affordability restrictions, price controls, or occupied by low income households. Consequently, any projects meeting these requirements should be conditioned upon compliance with these provisions.

L. Changes to Permit Streamlining Act Deadlines

SB 330 reduces the time period in which a city is required to approve or disapprove a development project that is subject to the Permit Streamlining Act from 120 days to 90 days from certification of an Environmental Impact Report (Gov. Code, §

Thank you and please do not support SB 330 unless there are adequate safeguards for California’s historic resources.”]

65950(a)(2)) and from 90 days to 60 days, for a development project that is at least 49% affordable units (Gov. Code, § 65950(a)(3)(A)). These provisions of SB 330 do not preclude a project applicant and the City from mutually agreeing in writing to an extension of these time limits. (Gov. Code, § 65950(b).)

III. NEW REGULATIONS ON ACCESSORY DWELLING UNITS

A. Background on 2019 ADU Legislation

Six separate bills addressing Accessory Dwelling Units (ADUs) and Junior ADUs were passed in 2019 and are effective as of January 1, 2020.¹⁵ An ADU is an attached or detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It must include provisions for living, sleeping, eating, cooking and sanitation on the same parcel as the single or multiple family dwelling. Manufactured homes and efficiency units are also ADUs.¹⁶

A Junior ADU is a unit that is no more than 500 sq. ft in size and is contained entirely within an existing single-family structure. A Junior ADU may include separate sanitation facilities or may share sanitation facilities with the existing structure.¹⁷

B. General Provisions

The legislation substantially changes the existing law on ADUs and Junior ADUs. Any conflicting local provisions are considered null and void and the new statewide legislation applies. Local ordinances adopted pursuant to the new legislation must be sent to HCD within 60 days after adoption for its review. Any such update is exempt from CEQA review.

Permits for ADUs and Junior ADUs must be reviewed ministerially and no public hearings are permitted. The City has 60 days to act on an application from the time an application is complete if there is an existing dwelling unit on the lot. If not acted upon

¹⁵ See SB 13 (Wieckowski: Section 3), AB 68 (Ting: Section 2), AB 881 (Bloom –Section 1.5), AB 670 (Friedman), AB 587 (Friedman), and AB 671 (Friedman). Note that Section 1.5 of AB 881 sunsets January 1, 2025 and is replaced by Section 2.5 of AB 881.

¹⁶ An Efficiency Unit is a unit occupied by no more than two persons, has a minimum floor area of 150 square feet, and may also have a partial kitchen or bathroom facilities. (See Health & Saf. Code, § 17958.1.)

¹⁷ Government Code § 65852.22.

within 60 days, the application shall be “deemed approved,” if and only if the City has not enacted a compliant ADU ordinance. ADUs and Junior ADUs built concurrently with a new single-family dwelling may be reviewed concurrently with the new dwelling though it is still considered a ministerial review.

There is some uncertainty regarding how the new legislation will be implemented within the coastal zone. On December 3, 2019 Coastal Commission staff indicated that they will be preparing guidance on implementation of these new ADU laws in the coastal zone in 2020.¹⁸ The legislation explicitly provides that it does not supersede the California Coastal Act, except that no public hearings are required for coastal development permits.

C. Standards

Collectively, the legislation limits the City’s ability to regulate ADUs and Junior ADUs. Key provisions include the following:

1. Permitted ADUs: The City must allow ADUs in areas zoned for single family and multiple family residential uses. In designating these areas, the City may take into account the adequacy of water and sewer services, and the impact of ADUs on traffic flow and public safety.
2. General Standards: The City can impose certain standards on the ADUs including parking, height, setback, landscape, architectural review, maximum size of units, lot coverage requirements and standards that prevent impacts on historic resources, subject to the following restrictions and mandatory approvals per Subsection D below. Building Code requirements apply.
3. Lot Size: The City cannot require a minimum lot size for ADUs.
4. Setbacks: No setback standards are allowed for conversions of existing structures. For all other ADUs (new or expansions), setbacks of no more than 4 feet side and rear-yard shall be required.
5. Size Requirements:
 - a. If there is an existing primary dwelling, the total floor area of an attached ADU shall not exceed 50% of the existing dwelling.
 - b. The total floor area for a detached ADU shall not exceed 1200 sq. ft.

¹⁸ Coastal Commission December 3, 2019 Packet:
<https://documents.coastal.ca.gov/reports/2019/12/W6f/W6f-12-2019-report.pdf>

- c. Minimum unit size must allow efficiency units of 150 sq. ft.
 - d. Maximum unit size is at least 850 sq. feet and 1,000 sq. ft for ADUs with 2+ bedrooms.
 - e. Caveat: Size requirements must be waived to permit at least 800 sq. ft, 16 feet in height with 4-foot side and rear yard setbacks.
6. Parking:
- a. Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom, whichever is less, and parking standards can be reduced or eliminated.
 - b. Tandem parking and parking in setbacks must be allowed unless specific conditions make it infeasible.
 - c. Caveat: No parking may be required for ADUs that are:
 - i. Within ½ mile walking distance of public transit,
 - ii. Within an architecturally and historically significant district,
 - iii. That are part of the proposed or existing primary residence or converted accessory structure,
 - iv. In areas where on-street parking permits are required but not offered to ADU occupants, or
 - v. Within one block of car share vehicles.
7. Occupancy: Owner-occupancy requirements are not permitted. The ADU may be rented separately from the primary residence but may not be sold or conveyed separately from the primary residence. The City may prohibit rentals of less than 30 days in all ADUs and must prohibit rentals for the ADUs discussed in Subsection D below (Mandatory ADU approvals).
8. Sale or Conveyance: The City may allow the separate sale or conveyance of an ADU from a primary residence if it was constructed by a qualified nonprofit organization.
9. Fees: Impacts fees may not be charged on ADUs less than 750 sq. ft. For ADUs greater than 750 sq. ft, fees must be charged proportionally to the square footage of the primary dwelling unit. Connection fees and capacity charges may be charged for ADUs that are not subject to mandatory approval discussed below.

D. Mandatory ADU Approval

1. The legislation provides that regardless of all other provisions, the City must approve building permits in any residential or mixed-use zones for the following categories:
 - a. Single Family Lots: One ADU or Junior ADU per lot with a proposed or existing single-family dwelling, subject to certain requirements.
 - b. Single Family Lots: One detached, newly construction ADU that does not exceed four-foot side and rear yard setback. This ADU may be combined with a Junior ADU per a. above.
 - c. Multifamily Lots: The City must also approve multiple ADUs of no more than 800 sq. ft. and 16 feet in height, located within existing multifamily dwelling structures. Spaces to be converted include areas not used as living space such as storage rooms, attics, garages and the like. The City must allow at a minimum one ADU or 25% of the existing number of dwelling units, whichever is greater.
 - d. Multifamily Lots: The City must approve no more than two ADUs detached from the existing multifamily building, with a 16-foot height limit and 4-foot side and rear yard setbacks.
2. The City shall require rental occupancy of the ADU to be greater than 30 days.
3. The City may not require correction of nonconforming zoning conditions as a condition of above for the above mandatory ADU approvals.

*Overview of SB 330: Housing Crisis Act of 2019
&
New Regulations on Accessory Dwelling Units*

January 21, 2020



Overview of SB 330

- Designed to expedite construction of housing
- California has a 180,000 unit housing demand
- Fewer than 80,000 units constructed annually
- Seeks 500,000 new homes annually



Overview of SB 330

- Creates new housing entitlement regulations
- Applies to “housing development projects”
 - Projects with only residential units
 - Mixed use projects with 2/3rd sq. ft. residential
 - Transitional and supportive housing



Moratorium Limits

- Moratoria or similar restrictions must be approved by HCD
- Finding of imminent threat to health and safety
 - More stringent than existing provisions



Moratorium Limits (Cont.)

- SB 330 does not define “imminent threat”
- General Definitions:
 - “Likely to occur at any moment”
 - “Ready to take place: happening soon; menacingly near”
 - “Threatening to occur immediately”



Moratorium Limits (Cont.)

- City's Growth Management Plan (GMP) Moratoria Provision?
 - Test: Is there an imminent threat to the health and safety of persons residing within the immediate vicinity of the area subject to the moratorium?
 - May depend specific factual situation or the performance standard at issue



Limits to Housing Permit Regulations

- SB 330 imposes housing cap limitations
- May limit City's ability to enforce:
 - Residential “quadrant limits” in GMP
 - Growth Management Control Points
 - Population density standards



Limits on Reducing Residential Density

- Precludes legislative amendments to less intensive use compared to regulations in place on 1/1/2018
- Exceptions:
 - Concurrently adopted changes in other development standards – no net loss in residential capacity
 - Mobile home park standards



New Housing Projects: No Net Loss

- New Housing Projects:
 - If residential units are demolished, must ensure no net loss in residential units



New Preliminary Application Process

- Requires City to:
 - Create a new first step: preliminary application checklist
 - Utilize standardized checklist by HCD
 - No additional information can be required



Prohibition on New Fees and Exactions

- Regulation freeze after preliminary application submitted
 - Overlaps with Gov. Code, § 66300(b)(1)(a)
 - Extends to *fees and charges*
- Regulation freeze not applicable (1) to certain automatic fee adjustments, (2) to health, safety, and CEQA mitigation, or (3) after 2.5 years



New Development Application Requirements

- City is required to:
 - Update development application contents to identify existing Protected Units, which relates to new tenant right provisions
- Applicant must submit development applications
 - Within 180 days of preliminary application submittal



Development Applications

- City required to determine completeness of application within 30 days, or application deemed complete
- Based on required content of application



Development Applications (Cont.)

- If application is deemed incomplete, City must:
 - Provide list of incomplete items and indicate the manner for finalizing the application
- List is limited to items identified in the application
- Likely applies to all “development projects”



Development Applications (Cont.)

- Applicant to provide additional information within 90 days
 - Otherwise, preliminary application expires



“Protected Unit” Occupants

- Projects for removal/ demolition of units must:
 - Provide occupants with relocation benefits
 - Right of first refusal for comparable unit
- “Protected Units” include:
 - Affordability restrictions, price control, low income



Prohibition on Subjective Design Standards

- Prohibits enactment of new subjective design standards established on or after January 1, 2020
 - Regardless of whether the City met RHNA
- Existing Law generally limits application of existing subjective design standards.



Prohibition on Subjective Design Standards

- Objective design standards are defined as “involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.”



Historic Resource Determination

- City must determine if project is a historic site
 - Determined when development application is “complete”
- Unclear if this determination is applicable to the CEQA process



Hearings for Projects

- City is limited to no more than five hearings
- Five hearing limits applies to housing development projects, which comply with applicable standards, after an application is deemed complete



Hearings for Projects (Cont.)

- This five-hearing limits does not apply to:
 - General plan
 - Specific plan
 - Zoning amendments or appeals
 - Projects requesting legislative approval



Hearings for Projects (Cont.)

- City is required to:
 - Approve/ disapprove project by 5th hearing
 - A continued hearing is an additional hearing
- Projects for approval by non-elected body:
 - Consider action by 4th hearing



Changes to Deadlines

- Reduces time period for decision on a project
 - Applies to Permit Streamlining Act
- Certification of EIR
 - Reduced from 120 days to 90 days
 - 90 days to 60 days for 49% affordable unit projects



Accessory Dwelling Units *“ADUs”*

New Legislation, effective 1/1/2020



Overview

- Legislation substantially changes existing law
- Applies to ADUs & Junior ADUs (JADU)
 - ADU: attached/detached independent living
 - JADU:
 - 500 sq. ft. maximum
 - Within existing single-family residence



Overview (Cont.)

- Existing ADU ordinances
 - Conflicting sections are null & void
 - Revised & submitted to HCD for review
- Revised ordinance exempt from CEQA



Overview (Cont.)

- Major components of ADU legislation
 - What City can/cannot regulate
 - Mandatory ADU approvals



Overview (Cont.)

- ADU permits reviewed ministerially:
 - No public hearing
- Review timeframes:
 - Existing residence: 60 days to act on completed ADU application
 - Proposed residence: review ADU concurrently



Key Provisions

- Location: Where zoned for residential uses
- May only restrict location* based on:
 - Adequacy of water & sewer
 - Traffic flow & public safety
- * N/A to “mandatory” ADUs



Standards

- City can impose certain ADU standards:
 - I.e., parking, height, setback, landscape, lot coverage, maximum unit size
 - Historic resources, architectural review
- BUT several exceptions



Standards (Cont.)

- Exceptions:
 - Cannot require minimum lot size
 - Setbacks:
 - None required when converting existing structure
 - No greater than 4-foot rear and side setback required



Standards (Cont.)

- Min./Max. Size Requirements
 - Minimum size must allow Efficiency Units
 - Maximum size must be at least 850 sq. ft.
- At least 1,000 sq. ft. for 2+ bedroom ADU
- Applies to both attached & detached ADUs



Standards (Cont.)

- Min./Max. Size Requirements (Cont.)
 - Detached ADU: Total floor area = 1200 max.
 - Attached ADU: Total floor area \leq 50%
- Waive standards to permit 800 sq. ft. ADU
 - 16-foot height and 4-foot rear and side yard setbacks



Standards (Cont.)

- Parking
 - One space/bedroom or ADU, whichever is less
 - No parking for ADUs:
- ½ mile walking to transit
- Part of proposed/existing residence or converted accessory building



Standards (Cont.)

- No parking for ADUs: (Cont.)
 - Within architecturally/historic district
 - Within one block of car share vehicles
 - No on-street parking permits for ADU
- No replacement parking if parking=>ADU



Mandatory ADU Approval

- *Must* approve in Residential/Mixed Use Zones:
 - One ADU/JADU within existing or proposed SFR
 - Expansion up to 150 sq. ft. of existing space
 - Exterior access
 - Setbacks sufficient for fire & safety



Mandatory ADU Approval (Cont.)

- One detached, new ADU with existing/proposed SFR with 4-foot rear and side setback
 - May require no more than 800 sq. ft.
 - May limit height to 16 feet
 - May be combined with a JADU



Mandatory ADU Approval (Cont.)

- Existing Multifamily Buildings - Must Allow:
 - Conversion of non-livable space
 - I.e., garages, storage rooms, attics
- # ADUs: > between 25% of existing units or one unit
- No more than two detached units
 - 16-foot height; 4-foot rear and side setback



Mandatory ADU Approval (Cont.)

- May *not* require correction of nonconforming zoning as a condition of approval



Other Key Provisions

- No owner-occupancy requirements allowed
- City may prohibit all ADU rentals less than 30 days
 - *But “mandatory” ADUs:*
 - *Must* prohibit short-term rentals



ADU Fees

- Impact fees
 - < 750 sq. ft.: none
 - 750 sq. ft.+ : proportional to residence sq. ft.



ADU Fees

- Connection fees
 - Mandatory ADUs:
 - No connection fee/capacity charges
 - Unless in connection w/new SFR
 - All other ADUs:
 - Proportionate to burden



Additional ADU Legislation

- CC&Rs that prohibit/restrict ADUs are void
- Next Housing Element:
 - Plan to promote affordable ADUs
 - HCD to provide guidelines
 - ADUs count toward total RHNA



Enforcement

- ADUs built before 1/1/2020:
 - Notice of Violation
 - Owner may request 5 year delay
 - No delay if health & safety violation
 - No delays after 1/1/2030





CITY OF
CARLSBAD
Office of the City Attorney

www.carlsbadca.gov

Sent via Email & U.S. Mail

August 4, 2020

Anastasia Baskerville, Esq.
Melinda Coy, HCD Policy Specialist
Department of Housing & Community Development
Housing Policy Development Division
2020 W. El Camino Ave, Suite 525
Sacramento, CA 95833

Re: Request for Opinion: Enforceability of City's Growth Cap

Dear Ms. Baskerville and Ms. Coy:

The City of Carlsbad ("City") requests Department of Housing & Community Development's opinion as to the enforceability of the City's growth cap established pursuant to the City's Growth Management Program¹ (Proposition E and implementing regulations, collectively "GMP") in light of Senate Bill 330 (SB 330) and the City's need to accommodate its assigned Regional Housing Needs Assessment ("RHNA") for the sixth housing element cycle.

Specifically, does the growth cap provision of the GMP run afoul of SB 330 that prohibits housing cap limitations? And are the established growth cap numbers, City-wide and by quadrant, enforceable if they preclude the City from identifying adequate land capacity to accommodate its share of the RHNA, some 3,873 housing units? (Gov. Code, §§ 66300, subd. (b)(B)(ii),² 65583,³ and 65863.⁴)

The City's Growth Management Plan

In 1986, the City passed the GMP. Among other things, the GMP establishes the maximum number of homes that can be built in the City, referred to as the growth cap. To ensure even distribution of housing development, the City was divided into quadrants with each

¹<https://www.carlsbadca.gov/services/depts/planning/growth.asp>.

²https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1.&title=7.&part=&chapter=12.&article=.

³https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=65583,

⁴http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65863.&lawCode=GOV



quadrant assigned a portion of the City’s growth cap, referred to as quadrant caps. Under the GMP, once a quadrant reaches its assigned cap, the City is precluded from approving any further housing development in that quadrant.

The GMP states “The maximum number of residential dwelling units to be constructed or approved in the City after November 4, 1986 is as follows: Northwest Quadrant 5,844; Northeast Quadrant 6,166; Southwest Quadrant 10,667; Southeast Quadrant 10,801. [¶] The City shall not approve any General Plan amendment, zone change, tentative subdivision map or other discretionary approval for a development which could result in development above the limit in any quadrant.” (See Footnote 1, *supra*. See also Carlsbad Municipal Code, § 21.90.185⁵ [renaming the quadrant limits as “Residential dwelling unit caps”].)

SB 330 Limitations on Regulations for Housing Permits

SB 330, entitled the Housing Crisis Act of 2019, took effect on January 1, 2020 and adopts new permitting regulations for housing that greatly limit public agencies’ ability to deny housing developments. The Act will sunset January 1, 2025 unless extended by the Legislature. As it relates to the City’s efforts to update its housing element, SB 330 prohibits any laws that act as a cap on the number of housing units that can be approved or constructed.

Specifically, SB 330 states that a city “shall not enact a development policy, standard or condition...establishing or implementing any provision that: (i) “limits the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the...city,” (ii) “acts as a cap on the number of housing units that can be approved or constructed either annually or for some other time period,” or (iii) “limits the population of the affected city.” (Gov. Code, § 66300, subd. (b)(1)(D).)

These housing cap limitations from SB 330 raise questions regarding the ability of the City to enforce (1) its overall growth cap, and (2) the residential “quadrant limits” contained in the GMP.

The City’s RHNA Allocation

On July 10, 2020, the San Diego Association of Governments (“SANDAG”) Board of Directors adopted the final Regional Housing Needs Assessment Plan for the San Diego region, including HCD’s determination of 171,685 housing units needed in the region. Based on a SANDAG-developed methodology, the City’s share of the RHNA allocation for the sixth housing cycle is as follows:

2021-2029 RHNA Allocation by Income

- Very Low = 1,311

Anastasia Baskerville, Esq.
Melinda Coy, HCD Policy Specialist
DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT
HOUSING POLICY DEVELOPMENT DIVISION
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- Low = 784
- Moderate = 749
- Moderate-Plus = 1,029
- **Total = 3,873**

The City is studying how to meet its RHNA obligation for each income level. The City is concerned that, at a minimum, it may be necessary to exceed the quadrant growth cap(s) to do so. While the City explores its options to address these deficiencies, we would appreciate HCD's opinion on the enforceability of the growth cap. This matter is currently scheduled to be heard by the City Council at a workshop on August 27, 2020.

Sincerely,



Celia A. Brewer
CITY ATTORNEY

Attachment: Proposition E

cc: City Manager

**CITY OF CARLSBAD
Proposition E**

(This proposition will appear on the ballot in the following form.)

E Shall an ordinance be adopted to provide as a part of the 1986 growth management plan that 1) NO DEVELOPMENT SHALL BE APPROVED by the City of Carlsbad unless it is guaranteed that concurrent with need all necessary public facilities be provided as required by said plan with emphasis on ensuring good traffic circulation, schools, parks, libraries, open space and recreational amenities; and 2) the City Council shall not approve residential development which would increase the number of dwelling units beyond the limit in said ordinance WITHOUT AN AFFIRMATIVE VOTE OF THE CITIZENS. The City may add additional public facilities. The City shall not reduce public facilities without a corresponding reduction in the residential dwelling unit limit.

PROPOSED ORDINANCE

The People of the City of Carlsbad do ordain as follows:

A. That the Carlsbad general plan shall be amended by the amendment of the Public Facilities and Land Use Elements to add the following:

"The City of Carlsbad in implementing its public facilities element and growth management plan has made an estimate of the number of dwelling units that will be built as a result of the application of the density ranges in the Land Use Element to individual projects. The City's Capital Improvement Budget, growth management plan, and public facilities plans are all based on this estimate. In order to ensure that all necessary public facilities will be available concurrent with need to serve new development it is necessary to limit the number of residential dwelling units which can be constructed in the City to that estimate. For that purpose the City has been divided into four quadrants along El Camino Real and Palomar Airport Road. The maximum number of residential dwelling units to be constructed or approved in the City after November 4, 1986 is as follows: Northwest Quadrant 5,844; Northeast Quadrant 6,166; Southwest Quadrant 10,667; Southeast Quadrant 10,801.

The City shall not approve any General Plan amendment, zone change, tentative subdivision map or other discretionary approval for a development which could result in development above the limit in any quadrant. In order to ensure that development does not exceed the limit the following growth management control points are established for the Land Use Element density ranges.

ALLOWED DWELLING UNITS PER ACRE

<u>General Plan Density Ranges</u>	<u>Growth Management Control Point</u>
RL 0 - 1.5	1.0
RLM 0 - 4.0	3.2
RM 4 - 8.0	6.0
RMH 8 - 15.0	11.5
RH 15 - 23.0	19.0

(Continued on next page)

The City shall not approve any residential development at a density that exceeds the growth management control point for the applicable density range without making the following findings:

1. That the project will provide sufficient additional public facilities for the density in excess of the control point to ensure that the adequacy of the City's public facilities plans will not be adversely impacted.

2. That there have been sufficient developments approved in the quadrant at densities below the control point to cover the units in the project above the control point so the approval will not result in exceeding the quadrant limit.

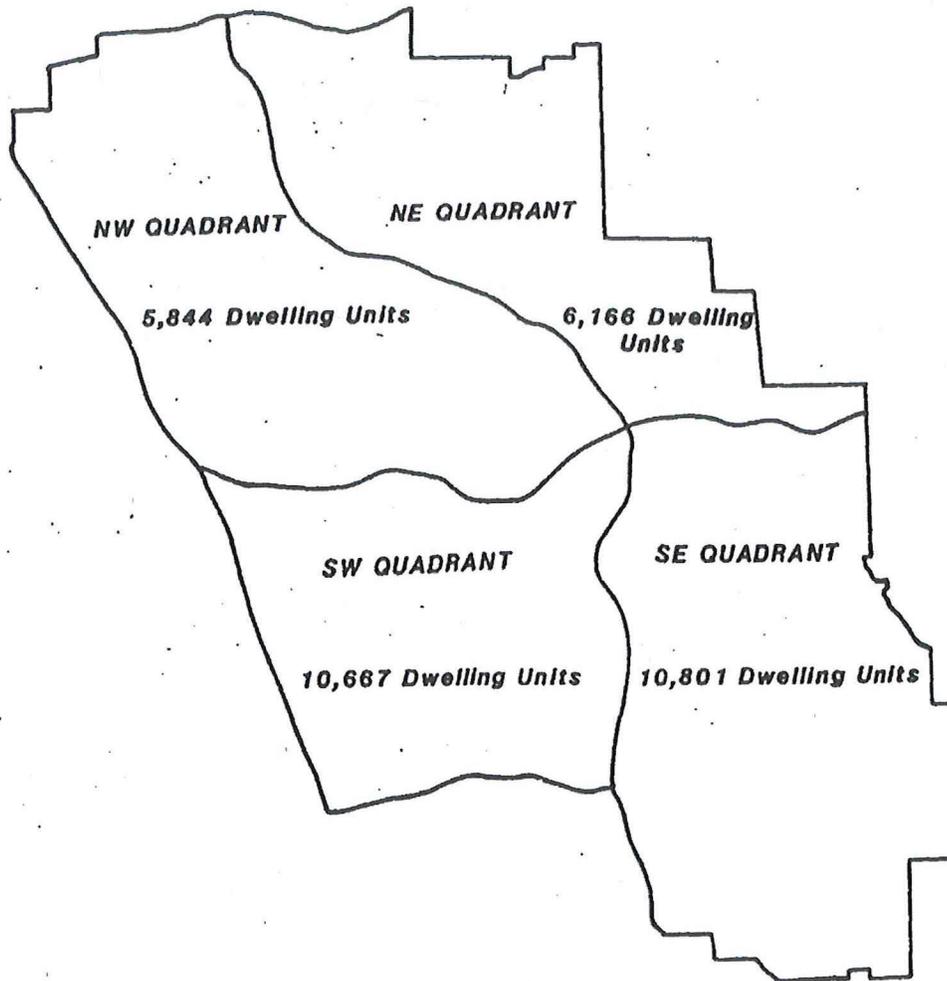
The City Manager shall monitor all approvals and report to the Planning Commission and City Council on an annual basis to ensure that the construction of residential units within each quadrant, on a cumulative basis, will be at or below the growth management control points and that the overall quadrant limits are being maintained. If the annual report indicates in any way that it is likely that the limit may be exceeded, the Council shall take appropriate action by revising the growth management plan and the City's zoning code to ensure that the ceilings will be maintained.

The City Council or the Planning Commission shall not find that all necessary public facilities will be available concurrent with need as required by the Public Facilities Element and the City's 1986 growth management plan unless the provision of such facilities is guaranteed. In guaranteeing that the facilities will be provided emphasis shall be given to ensuring good traffic circulation, schools, parks, libraries, open space and recreational amenities. Public facilities may be added. The City Council shall not materially reduce public facilities without making corresponding reductions in residential densities.

Nothing in this section shall be construed as changing the requirement that any specific residential density above the minimum allowed by the Land Use Element density ranges and the applicable zoning shall be justified according to the requirements of the appropriate General Plan and zoning provisions.

(Continued on next page)

B. The zoning map of the City of Carlsbad shall be amended to provide that building permits issued or approved for residential dwelling units in the City after November 4, 1986 shall not exceed the limits established in the map in this section. The numbers on the map shall not be increased without an affirmative vote of the people.



C. The City Council shall adopt amendments to Chapter 21.90 of the Carlsbad Municipal Code (Growth Management) as necessary to implement the General Plan amendment of Section A and the Map of Section B.

D. This ordinance is inconsistent with and intended as an alternative to any Initiative ordinance which would place an annual numerical limitation on the rate of residential construction. If this ordinance and any such Initiative ordinance are both passed by a majority voting thereon then the one with the most votes shall prevail."

PR-001.3

415-40