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8/25/2025

City of Menlo Park  
City Council  
701 Laurel St.  
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Re: Menlo Park RFP for Development on City-Owned Parking Lots

YIMBY Law is a California - based 501(c)3 non-profit corporation, whose mission is to increase the accessibility and affordability of housing. YIMBY Law sues municipalities when they fail to comply with state housing laws, including the Housing Accountability Act (HAA).

Program H4.G of Menlo Park's certified Housing Element makes specific commitments about surplus housing on city-owned parking lots.<sup>1</sup> The RFP, originally due to release in 2024, is now being considered by this Counsel to follow with applications for development, which the Housing element promised to permit and entitle by the end of 2025. The City cited this program as a means of alleviating housing barriers for individuals with disabilities and Affirmatively Furthering Fair Housing. This program was a result of public comment on the Element and HCD advice as to the insufficiency of an earlier draft.<sup>2</sup>

The draft RFP includes unexamined constraints on development that could illegitimately render any proposal infeasible. This action threatens to violate the Housing Accountability Act, Housing Element Law, and Menlo Park's ability to meet its statutorily mandated RHNA. Section 3.1 of the RFP "Provide at least 556 parking spaces ... without

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<sup>1</sup> Menlo Park, *6th Cycle 2023-2031 Housing Element*, January 2023. Available at [https://menlopark.gov/files/sharedassets/public/v/2/community-development/documents/projects/housing-element-update/2023-2031-city-of-menlo-park-housing-element-clean\\_010324.pdf](https://menlopark.gov/files/sharedassets/public/v/2/community-development/documents/projects/housing-element-update/2023-2031-city-of-menlo-park-housing-element-clean_010324.pdf)

<sup>2</sup> California Department of Housing and Community Development, *City of Menlo Park's 6th Cycle (2023-2031) Adopted Housing Element*, August 29, 2023. Available at <https://menlopark.gov/files/sharedassets/public/v/1/community-development/documents/projects/housing-element-update/20230829-hcd-review-letter-for-revised-he.pdf>

financial contribution from the city”.<sup>3</sup> It would also disallow a proposal from seeking waivers and/or incentives pursuant to the state density bonus law and/or the City’s AHO [Affordable Housing Overlay].”<sup>4</sup>

Requiring one for one parking spaces with no financial assistance is not contained within Menlo Park’s objective design standards. The HAA does not permit denials based on criteria that are not contained within said standards.<sup>5</sup> Moreover, the added costs of over 500 parking spaces will easily number in the tens of millions of dollars, which an affordable housing developer is expected to build with no assistance from the City.

Disallowing state Density Bonus and the local overlay is more concerning. A Density Bonus is not a matter of discretion; when a project meets the criteria, cities are obligated to allow such bonuses, and may not condition the application on additional criteria because they seek density bonuses.<sup>6</sup> Accepting the bonus is mandatory,<sup>7</sup> whether or not the project meets local zoning standards.<sup>8</sup>

The Affordable Housing Overlay was adopted specifically “to implement the housing element goal of providing new housing that addresses affordable housing needs in the city of Menlo Park by establishing development regulations for designated housing opportunity sites.”<sup>9</sup> Menlo Park cannot meet its Housing Element obligations, which it set for itself, by arbitrarily undercutting the very programs that exist *specifically* to make those programs feasible.

California’s Housing Element Law requires cities to comply with the programs and zoning amendments set forth in its Housing Element.<sup>10</sup> Deliberately ignoring that Housing Element could render the city non-compliant and open it up to unlimited Builder’s Remedy applications, by-passing local zoning entirely.<sup>11</sup> Further, all cities in California bear a statutory duty to take meaningful actions to address racial housing disparities and concentrated areas of poverty.<sup>12</sup> The city’s Housing Element agreed to measures which could accomplish these goals, but those agreements are meaningless without follow-through.

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<sup>3</sup> Staff report page 15, section 3.1, item C.

<sup>4</sup> Staff report page 15, section 3.1, item D.

<sup>5</sup> Ca. Gov. Code § 65589.5(j)(l)(A) & (B).

<sup>6</sup> Ca. Gov. Code § 65915.

<sup>7</sup> *Latinos Unidos Del Valle de Napa v. County of Napa*, 217 Cal. App. 4th 1160 (2013).

<sup>8</sup> *Schreiber v. City of Los Angeles*, 69 Cal.App.5th 549 (2021).

<sup>9</sup> Menlo Park code of ordinances 16.98.010 Purpose and goal.

<sup>10</sup> Ca. Gov. Code § 65754.

<sup>11</sup> Ca. Gov. Code § 65589.5(d).

<sup>12</sup> Cal Gov Code § 8899.50.

If Menlo Park wants to allow for affordable housing development, meet its RHNA obligations, and maintain a compliant Housing Element, it must remove these references in the RFP. The proposed development must be able to utilize the already effective legal remedies in state and local law to facilitate development, or this RFP will render program H4.G useless. Indeed, it will be difficult not to conclude that the City is deliberately obstructing development when it goes so far out of its way to add expense and remove crucial development tools.

If non-compliance with Housing Element programs is not taken seriously, Menlo Park opens itself up to litigation. YIMBY Law is willing to pursue that litigation. I am signing this letter both in my capacity as the Executive Director of YIMBY Law, and as a resident of California who is affected by the shortage of housing in our state.

Sincerely,



Sonja Trauss  
Executive Director  
YIMBY Law



Dylan Casey  
CalHDF Executive Director

