



# County of San Mateo

## Inter-Departmental Correspondence

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**Department:** COUNTY EXECUTIVE

**File #:** 23-665

Board Meeting Date: 8/1/2023

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**Special Notice / Hearing:** None  
**Vote Required:** Majority

**To:** Honorable Board of Supervisors  
**From:** Michael Callagy, County Executive  
**Subject:** Board of Supervisors Response to 2022-23 Civil Grand Jury Report "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?"

### **RECOMMENDATION:**

Approve the Board of Supervisors response to the 2022-23 Civil Grand Jury Report "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?"

### **BACKGROUND:**

On June 12, 2023, the 2022-23 San Mateo County Civil Grand Jury issued a report titled "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?" Pursuant to Section 933(c) of the California Penal Code, the Board of Supervisors is required to submit comments on the findings and recommendations pertaining to the matters over which it has decision-making authority within 90 days of the date on which the report was released to the public. The Board's response to the report is therefore due to the Honorable Nancy L. Fineman, of the San Mateo County Superior Court, no later than September 11, 2023.

### **DISCUSSION:**

The Grand Jury made seven findings and six recommendations in its report. Staff has reviewed the Grand Jury's report and assisted in drafting the County's response. The responses recommended to the San Mateo County Board of Supervisors (Board) follow each finding and recommendation that the Grand Jury requested that the Board respond to.

## **FINDINGS**

### **Finding 1:**

Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

**Response:** The County of San Mateo **agrees** with this finding. This is not currently allowable under State law.

## Finding 2:

San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

**Response:** The County of San Mateo **agrees** with this finding as it pertains to the unincorporated area of the County. The County relies on ADUs to meet a small portion of its overall RHNA and lower-income RHNA for the 2023-2031 Housing Element. Of the County's total RHNA of 2,833 housing units, the County included 355 units (12.5 percent of the total RHNA) coming from ADUs in its Draft Housing Element. Of these, 107 units each were projected for the very low income and low-income levels. The County of San Mateo lacks sufficient information to either agree or disagree with respect to the reliance of municipalities on ADUs to meet their affordable housing mandates.

In response to California Department of Housing and Community Development's (HCD) recent comments on its draft Housing Element, the County will likely reduce the share of its RHNA to be met by ADUs even further from the levels identified in the County's Draft Housing Element. While it is strictly true that the County relies on ADUs to meet a portion of its Cycle 6 RHNA, that portion is minimal.

## Finding 4:

HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.

**Response:** The County of San Mateo **agrees** with this finding. HCD has not provided the County or other jurisdictions with guidance on how to verify the income level of households occupying ADUs, and the County is so far relying on ABAG's regional data on affordability to impute ADU affordability, as noted in the report. County of San Mateo plans to support a regional ADU monitoring effort through ABAG or 21 Elements, a long-standing collaboration among the 21 jurisdictions of San Mateo County.

## Finding 5:

Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

**Response:** The County of San Mateo partially **agrees** with this finding. The County already reports on annual progress on housing production (including ADUs) via the required Housing Element Annual Progress Reports to the State, using data from its online permit system on building permits issued. These are the most accurate existing assessments of actual housing production, including ADU production.

The County has not yet determined a robust method to verify individual ADU affordability, which is challenging without deed restricting or otherwise requiring ongoing monitoring and reporting, which is both contrary to State law, and a potential disincentive to ADU production. While the County currently has no information on whether and to what extent other jurisdictions have identified specific monitoring and verification methods, the County intends to monitor other jurisdiction's methods and their effectiveness and will refine our methodology on an ongoing basis.

The County welcomes suggestions for better determinations of affordability that don't mitigate the incentive to produce units, and that comply with State ADU law. San Mateo County jurisdictions met on June 20, 2023, to discuss potential strategies for monitoring ADU affordability levels. County of San Mateo is planning to support a regional ADU monitoring effort through ABAG or 21 Elements. We expect this monitoring effort to begin no later than two years after the 2023-2031 Housing Element was due (early 2025).

**Finding 6:**

Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.

**Response:** The County of San Mateo **agrees** with this finding.

**Finding 7:**

ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

**Response:** The County of San Mateo **agrees** that ADU affordability and occupancy could be monitored by outside organizations or entities with proven processes to verify occupancy.

## **RECOMMENDATIONS**

**Recommendation 1:**

San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.

**Response:** *The recommendation will not be implemented.* The County of San Mateo disagrees with this recommendation. ADUs are needed as one among many tools to meet housing production targets, and the County is using them as directed by HCD, and as allowed by Housing Element law.

Furthermore, the County's Housing Element was developed through a rigorous process of multiple years of public input and revisions. The County is close to a final submission to HCD; it is not feasible to remove this component of the sites inventory from our Housing Element this late in the process.

However, the County is committed to following State housing law and to supporting the development of an effective regional ADU monitoring program that will be operated by 21 Elements or ABAG. The County also supporting the development of a new ADU nonprofit that will have programs to incentivize the production of affordable ADUs in San Mateo County.

**Recommendation 2:**

By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.

**Response: *The recommendation will be jointly implemented at a time not yet identified with other jurisdictions and the regional agency Association of Bay Area Governments (ABAG), as the issue outlined requires a countywide solution.*** The County of San Mateo partially agrees with this recommendation. The County plans to participate in the ABAG or 21 Elements ADU monitoring system, projected to launch in early 2025, which would provide more robust information on how the homeowner plans to use their ADU at the time of permit issuance. However, privacy concerns among both homeowners and those occupying ADUs and the cost of engaging with thousands of homeowners and tenants each year would make it infeasible to have an ongoing verification system that checks the income of residents of all ADUs in the county.

### **Recommendation 3:**

By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

**Response: *The recommendation will be assessed and potentially jointly implemented at a time not yet identified with other jurisdictions and the regional agency Association of Bay Area Governments (ABAG).*** The County of San Mateo agrees in part with this recommendation. While the County agrees with and will be supporting new efforts to encourage the production of affordable ADUs (as discussed in R1), the County maintains that the changes in State law that have relaxed ADU development standards mean that there are no additional standards that can be relaxed or waived that would provide meaningful benefits to owners that would be an effective incentive to deed restrict their ADUs. As such, regulatory incentives to deed restrict ADUs would likely not be effective. However, financial, technical, and other assistance for construction, conversion and/or legalization of ADUs in exchange for long-term affordability agreements could have potential impact, although the County believes that in light of the permissive ADU standards now in place, this impact is likely to be limited. In combination with the efforts described below in response to R4, the County intends to assess the range of possible incentives, in collaboration with other jurisdictions. However, such an incentive program cannot be designed and implemented by February 1, 2024.

### **Recommendation 4:**

By February 1, 2024, San Mateo County and each City should track the intended use of ADUs - rented or non-rented - during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

**Response: *The recommendation will be jointly implemented at a time not yet identified with other jurisdictions and the regional agency Association of Bay Area Governments (ABAG), as the issue outlined requires a countywide solution.*** The County of San Mateo partially agrees with this recommendation. The County supports the ABAG or 21 Elements ADU monitoring system, expected to launch early 2025, that would gather information on intended use of ADUs at the permitting stage. The County also supports the development of a proposed ADU nonprofit serving San Mateo County jurisdictions that would encourage affordable ADU production and provide assistance and support to homeowners in constructing ADUs in exchange for commitments to rent at affordable levels. The project is anticipated to launch in summer 2024.

**Recommendation 5:**

By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.

**Response:** *The recommendation will not be implemented by the County.* The County of San Mateo disagrees with this recommendation. While the County does agree with the importance of an accurate distribution formula, developing a distribution formula specific to the unincorporated County only by April 2024 would not be feasible and would not provide robust data to improve the distribution formula. A meaningful distribution formula can best be accomplished by collecting data on ADUs constructed across all San Mateo County jurisdictions, and across a longer timeframe. The County supports the creation of an ADU monitoring program through 21 Elements or ABAG that would collect data that can be used to revise the distribution formula based on actual observed income levels.

**Recommendation 6:**

San Mateo County and each City should consider working together to address Recommendations 2 and 3.

**Response:** *The recommendation will be jointly implemented at a time not yet identified with other jurisdictions and the regional agency Association of Bay Area Governments (ABAG), as the issue outlined requires a countywide solution.* The County of San Mateo is already working in partnership with the other county jurisdictions through 21 Elements to develop, adopt, and implement a system to monitor intended ADU use at permit issuance, and to explore options to encourage affordable ADU production. Regional approaches are more likely to be effective and realistic and the County will continue to be an active participant in 21 Elements and ABAG efforts around ADU production and stewardship.

**FISCAL IMPACT:**

There is no fiscal impact associated with the acceptance of this report.