



STAFF REPORT

TO: CLAYTON CITY COUNCIL

FROM: Kraig Chalem, Senior Planner

DATE: April 7, 2026

SUBJECT: Introduce An Ordinance Amending The Clayton Municipal Code Subsection 17.36.079 To Chapter 17.36 (General Regulations) Of Title 17 (Zoning) To Add Specific Language Allowing Certain Affordable Housing By-Right And Defining By-Right

RECOMMENDATION

That the City Council of the City of Clayton:

- Introduce Ordinance No. 503 amending the Clayton Municipal Code subsection 17.36.079 to Chapter 17.36 of Title 17 to state that developments Identified to accommodate the Regional Housing Needs Allocation shortfall and meeting affordable housing requires pursuant to Government Code section 65583.2(c), (h), and (i), are allowed by right and defining by right,
- Conduct a Public Hearing, accept written and spoken testimony, and
- Close the public hearing.

BACKGROUND

On January 17, 2023, the Clayton City Council adopted the Housing Element Update (HEU) for the 6th Housing Cycle, approved in December 2022. Following the public hearing, the City Council adopted Resolution No. 06-2023 certifying the Final Environmental Impact Report (EIR) prepared for the project and adopting the update to the Housing Element and the associated Land Use Element and Land Use Diagram amendments. City Council Resolution No. 06-2023 (as well as the Planning Commission Resolution No. 04-2022) recommending adoption of the General Plan amendments. At its January 16, 2024, meeting, the City Council adopted amendments to Clayton Municipal Code Title 17 (Zoning) to implement certain adopted Housing Element policies.

The HEU and zoning amendments were forwarded to the State Housing and Community Development Agency (HCD) for certification process by the Agency. The correspondence between the City and HCD has been ongoing for that certification resulting in HCD's returning with required amendments. Which has resulted in two previous amendments supporting multifamily housing where at least 20% of the units are deed-restricted affordable units (including junior accessory dwelling units); and any multifamily housing that complies with all

objective development and design standards are allowed by right. Staff had thought that all issues had been resolved and followed up by submitting these amendments to HCD for certification. Since the last request for certification in January of 2026, HCD requested three additional provisions be added.

DISCUSSION

As noted above, HCD has requested additional amendments to the City municipal code regarding entitlements, which staff seeks to satisfy by amending Chapter 17.36. Specifically, HCD recommends adding that, per Government Code section 65583.2(c), (h), and (i), sites identified to accommodate a shortfall for the lower income housing identified in program D2 of the housing element shall be an allowed residential use where at least twenty percent of the units are affordable to lower income households; minimum densities and residential requirements shall prevail over other allowed uses in the district; and, the term, “by-right” be defined in the municipal code.

At the Planning Commission on March 31, 2026, staff recommended the Planning Commission adopt Resolution 07-2026 which recommends that the City Council review and approve the Municipal Code amendments to include the following bullet points, and satisfy HCD’s requirements, that:

- per Government Code section 65583.2(c), (h), and (i) the Clayton Municipal Code reflects sites identified to accommodate a shortfall for the lower income housing identified in program D2 of the housing element be allowed where at least twenty percent of the units are affordable to lower income households; and,
- per Government Code section 65583.2(c), (h), and (i) minimum densities, and residential requirements shall prevail over regulations and allowed uses of the zoning district; and,
- the term “by-right” shall mean that the City's review of the project may not require a discretionary local government review or approval that would constitute a “project” under the California Environmental Quality Act as defined in Government Code Section 65583.2.

ANALYSIS

To effectuate this proposed change, staff recommend amending Chapter 17.36 (General Requirements) of Title 17 (Zoning) by adding subchapter 17.36.079 as follows:

17.36.079 - Housing Element Opportunity Sites.

Pursuant to Government Code section 65583.2(c), a non-vacant site that has been identified as a housing opportunity site in the City’s prior housing element and a vacant site that has been included in two or more consecutive housing element planning periods shall be an allowed residential use by right for housing developments where at least twenty percent of the units are affordable to lower income households. In addition, pursuant to Government Code section 65583.2(c), (h), and (i), sites identified to accommodate a shortfall for the lower income RHNA identified in program D2 of the housing element shall be an allowed residential use by right for housing developments where at least twenty percent of the units are affordable to lower income households. Requirements pursuant to Government Code section 65583.2(c), (h), and (i), including minimum densities and residential requirements, shall prevail over

regulations and allowed uses of the base zone. Pursuant to Government Code section 65583.2(i), the development shall comply with all objective development standards, and a proposed subdivision of the property shall be subject to all applicable laws. If applicable, such projects shall be subject to design review. By-right" shall mean that the City's review of the project may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a "project" under the California Environmental Quality Act as defined in Government Code Section 65583.2.

CEQA

In accordance with the California Environmental Quality Act and the State CEQA Guidelines Section 15061(b)(3), which states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The Zoning amendment as summarized above is within the scope of a non-project action.

FISCAL IMPACT

There are no immediate fiscal impacts associated with the project.

ATTACHMENTS

[ATT A - Clayton Planning Commission Resolution for HE- Code Further Amendment.docx](#)

[ATT B - Ordinance No. 503 Amending Title 17.pdf](#)