

City of Lafayette Staff Report

To: City Council

From: Diana Elrod, Housing Consultant
Lindy Chan
Greg Wolff
Niroop K. Srivatsa

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Subject: 2015-2023 Housing Element Update

Purpose

Initiate the Housing Element update and authorize the preparation of a density bonus ordinance.

Requirement for an Update to the Housing Element

All jurisdictions in the State of California are required by law to adopt and periodically update the Housing Element (HE) as part of their General Plans. Jurisdictions are required to submit draft and adopted elements to the Department of Housing and Community Development (HCD) for review and determination of compliance with State law. Within each planning period, regional housing needs are identified for every jurisdiction in a process referred to as the Regional Housing Needs Allocation (RHNA), which is administered by the Association of Bay Area Governments (ABAG) for the nine-county Bay Area. Housing Elements must contain the following:

1. An assessment of the housing needs of the population and its subpopulations, including the disabled, seniors, homeless persons and families, and lower-income households. The needs statement also includes projections of growth in the community in terms of population, housing units, and employment.
2. A detailed description of the City's efforts to address its housing needs, and programs to improve opportunities for development in the future.
3. An analysis of governmental and nongovernmental constraints to the development of housing, along with proposed efforts to mitigate those impacts.
4. An inventory of land zoned at appropriate densities to accommodate the development of housing across all income categories. While the City is not required to actually build these units, the City has the obligation to ensure that programs and policies are in place to allow the development of the RHNA allocation, should developers wish to do so.

The deadline for adopting an update to the Housing Element is January 31, 2015. The consequence of not adopting a housing element within 120 calendar days of this date is that a jurisdiction must revise and adopt its housing element every four years rather than every eight years.

Lafayette's total RHNA allocation for the planning period starting on January 31, 2015 and ending on January 31, 2023 is 400 dwelling units as described below.

Total Projected Need	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Average Yearly Need
400 units	138	78	85	99	57
	34.5%	19.5%	21.3%	24.87	

Initiating the Housing Element Update

The update to the Housing Element is a task on the approved 2014 work plan for the Planning Department. To initiate the update to the Housing Element, staff and the City’s housing consultant, Diana Elrod met with the City Council’s planning subcommittee (Tatzin, Anderson) and the Chair and Vice Chair of the Planning Commission (Lovitt, Chastain) on January 28 and March 3, 2014.

Issues to Consider

The subcommittee reviewed staff’s draft timeline and process and raised a number of issues which are explained below:

1. Housing Element Update – Processing Options: Streamlined or Standard?

The State Department of Housing and Community Development (HCD) has established an optional Streamlined Review (SR) process for the fifth cycle Housing Element (2015 – 2023). The Streamlined Review process will focus only those sections that have materially changed since the last Element. Under Streamlined Review, HCD would not review components of the Element such as the analyses of governmental constraints, the needs assessments, or the methodology for developing the RHNA inventory, if nothing in these components has changed. This process presents a good way to document to the HCD and interested parties exactly what has changed and what has not. However, in order to be eligible to undertake Streamlined Review, the City must:

1. Complete the draft HE, highlighting the areas that have changed that the State would need to review.
2. Complete any actions the City committed to in the last HE that were needed to comply with State law (the list includes ensuring shelters and transitional housing are allowed uses in some zones; implementing any actions that were needed to meet the RHNA numbers).
3. Adopt a density bonus ordinance consistent with State law.
4. Make sure it has submitted its annual report to HCD before submission of the draft HE.

While the City can meet criteria #1 and 4 and has completed many of its programs in the current Housing Element, it does not have a density bonus ordinance. In 2006, rather than adopting its own density bonus ordinance, the City adopted the State’s density bonus guidelines by resolution. The subcommittee asked staff to explain what a density bonus ordinance means and to provide the pros and cons of adopting a local ordinance. As explained below, regardless of whether or not the City adopts a density bonus ordinance, the City must grant a density bonus if requested by a developer and the project complies with State law.

II. Density Bonus Ordinance

The State Density Bonus Law (Section 65915 of the Government Code) was first adopted in 1979. The law allows developers who offer certain percentages of affordable units in their developments a density bonus above what the zoning ordinance would allow. Originally, developers received a density bonus of 25% if they met the density bonus requirements. In 2004, the State Legislature passed SB 1818, which significantly amended Section 65915 of the Government Code. The significant changes to the law, effective on January 1, 2005, include:

- A higher maximum market-rate unit density bonus of 35% for a lower percentage of affordable units provided;
- A sliding scale of market-rate density bonus percentages from 20%-35% depending on the percentage of affordable units provided;
- Provision for up to three (3) development concessions or incentives, depending on the percentage of affordable units provided;
- Granting the developer a density bonus if they donate land for very low income housing; and
- Requiring jurisdictions to implement Density Bonus law through local codes.

The following table summarizes the density bonus provisions.

Restricted Affordable Units or Category	Minimum Percentage of Restricted Affordable Units	Percentage of Density Bonus Granted	Additional Bonus for Each 1% Increase in Restricted Affordable Units	Percentage of Restricted Units Required for Maximum 35% Density Bonus
Very Low Income	5%	20%	2.50%	11%
Lower Income	10%	20%	1.50%	20%
Moderate Income	10%	5%	1%	40%
Senior Citizen Housing	100%	20%	--	--
Qualifying Mobile Park	100%	20%	--	--

In addition, SB 1818 increased the number of concessions and incentives that a developer could request for a lower percentage of affordable housing provided. As with the density bonus, the number of concessions and concessions is dependent on the affordability level of the units and the percentage of affordable units provided. Incentives include reductions in zoning standards, other development standards, design requirements, mixed use zoning, and any other incentive that would reduce costs for the developer.

Target Group	Restricted Affordable Units		
Very Low Income	5%	10%	15%
Lower Income	10%	20%	30%
Moderate Income (Common Interest Development)	10%	20%	30%
Maximum Incentive(s)/Concession(s)	1	2	3

Per State law, concessions must be granted to the developer unless the legislative body can make one of the following findings:

1. The concession, incentive, waiver or modification is not required to provide for Affordable Rents or Affordable Sales Prices; or
2. The concession, incentive, waiver or modification would have a specific, adverse impact upon public health or safety or the physical environment or on real property listed in the California Register of Historic Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to Low and Moderate Income households.
3. The concession, incentive, waiver or modification is contrary to State or Federal law.

As previously stated, in 2006, the City Council adopted the State's density bonus guidelines by resolution, but did not adopt an ordinance, indicating a concern that the law would undergo additional changes that would require ongoing amendments. As such, the City has applied the law on a case-by-case basis; for example, the Eden affordable senior project requested and received a density bonus and concessions in order for its project to be feasible.

As jurisdictions have adopted the State law, many wrestle with implementing it while respecting local codes, particularly in granting concessions and incentives. Some jurisdictions have adopted DBOs with a highly specific menu of automatic concessions. Any concessions requested not listed on the menu of concessions would require additional review by the legislative body in reviewing the development application. Other jurisdictions have left the door open to more general concessions.

There are pros and cons to adopting and not adopting a DBO. Here is a summary:

Adopting a DBO: Pro

1. Allows the City to take advantage of a Streamlined Review for the Housing Element, which limits HCD review to only those areas that have materially changed since the prior Housing Element was certified by the State (which the City would determine). This has the potential to mitigate community concerns if the City can demonstrate few material changes from the prior Element.
2. Gives greater certainty to developers about what they City may or may not provide in terms of concessions and incentives.
3. The City can be very specific in what it will allow as concessions/incentives, and regulate tightly (or prohibit) those options not on the list.

Adopting a DBO: Con

1. Even though the City is required to give bonuses with concessions if requested, the community may have negative perceptions about the City's role in complying with the law (for example, the community may presume the City is working with the State to take control of land use away from the people).
2. Can reduce the level of flexibility in how the City handles density bonus proposals.

NOT Adopting a DBO: Pro

1. Avoids a potential political fight about how development occurs in the City and the laws surrounding development.
2. Allows greater flexibility in reviewing density bonus proposals on a case-by-case basis.
3. There is no State enforcement mechanism for not adopting a DBO – the law states that a jurisdiction has to comply with the density bonus requirements, even if it does not have an ordinance.

NOT Adopting a DBO: Con

1. The City cannot take advantage of a Streamlined Review of its Housing Element, potentially opening the door for the State to revisit every aspect of the Housing Element, questioning its RHNA inventory methodology, etc. This could also have more significant impacts on the community's response to the Housing Element by bringing greater attention to the update.
2. Although there is no enforcement mechanism for the State, a developer seeking a density bonus with concessions can sue the City if the developer feels the City has not appropriately complied with State law.

III. Inventory of Vacant and Underdeveloped Sites

One section of the Housing Element that must be updated regardless of whether the City pursues the streamlined review or the standard review is the inventory of sites suitable for residential development to meet the jurisdiction's RHNA. The inventory must include zoning, suitability of sites, and realistic capacity. While the jurisdiction is not required to actually approve or develop these sites, it has to show that there are adequate sites with appropriate zoning to achieve the regional housing needs.

At the last subcommittee meeting, staff presented alternative draft inventories which took the following factors into consideration:

A. Updates to current inventory:

As part of the Housing Element update, the City must remove sites listed in the 2007-2014 inventory that have been developed (e.g. Eden, Merrill Gardens, Hungry Hunter) and provide new sites as necessary to meet RHNA. The City is also required to update the inventory any time a listed site is developed with anything other than housing, which is necessary to meet its RHNA allocation. For example, if the City included a parcel in the downtown in its inventory to meet RHNA, and a developer instead built a commercial project without housing, the City would have to update the inventory to show that it meets RHNA at all times. Because of this, it is important that the inventory provides a large enough buffer, over and above its RHNA requirement, in order to avoid having to add additional sites if any one parcel is developed with uses other than housing.

B. Developed sites in current inventory:

In addition to vacant sites, the City can include developed sites in the inventory. Factors that are considered in these developed sites are the age and condition of the existing development, marginal versus operational uses, degree of under-utilization, property owner and/or developer interest, general analysis by planning area, related development trends, and regulatory or other incentives to encourage additional residential uses of the sites.

C. New second units:

The City can include the production of new second units in its inventory; however it will have to demonstrate that the units are indeed affordable through rent surveys or other means. AB 2348 requires local governments that are meeting their RHNA requirements through means other than high-density zoning to demonstrate that their proposed approach is viable. Specifically, the law states:

65583.1. (a) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for substantial compliance with this article, may

allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. The department may also allow a city or county to identify sites for second units based on the number of second units developed in the prior housing element planning period whether or not the units are permitted by right, the need for these units in the community, the resources or incentives available for their development, and any other relevant factors, as determined by the department. Nothing in this section reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.

Several Bay Area jurisdictions count second units towards their RHNA numbers, including Piedmont and Los Altos Hills. It should be noted that, if a jurisdiction uses second units as the primary means of meeting the RHNA allocation, the State will expect the jurisdiction to provide assurances that these units will remain affordable (such as through income restrictions). The following provides background on both the Piedmont and Los Altos Hills programs.

Piedmont

Although Piedmont states that it could theoretically accommodate its lower-income units on land zoned at 20 units per acre or more, the city notes that the high cost of land, absence of suitable sites, and dynamics of the Piedmont real estate market make the development of traditional “apartment” projects impractical. Less than 1% of the city’s housing units are in buildings with five dwellings or more, and these units were constructed more than 40 years ago. Instead, it relies on the production of second units as the chief means of providing affordable housing.

As noted in its last Housing Element, in the four years since adoption of Piedmont’s Second Unit Ordinance, the city has had a successful track record of producing very low, low, and moderate income second units. For the first time in the City’s 102-year history, Piedmont has begun to develop a pool of income-restricted affordable units which meet the needs of lower income households. Every second unit application that has come before the Planning Commission since 2005 has been approved. In fact, the number of second units approved (11) was greater than the number of new owner-occupied homes approved during this time period.

Piedmont’s Second Unit Ordinance includes incentives to create rent-restricted units for low and very low income households. These incentives include waivers of parking requirements, which are typically the greatest obstacle to creating new second units. Half of the second units approved since 2006 have been rent and income restricted for very low income households. The market-rate (i.e., non-income restricted) second units also help meet the city’s affordable housing needs. Although the rents on these units are not regulated, they are generally \$1,000-\$1,500 a month and meet HUD affordability guidelines for small low and moderate income households.

Los Altos Hills

To meet its RHNA allocation for very low, low, and moderate incomes, the Town also relies primarily on the construction of second units. The Second Unit Survey sent to all Town residents in its last Housing Element round verified that second units remain a source of affordable, rental housing for the community. Further, based on the rate of construction of secondary units

between 2002 and 2008, the Town indicates it can meet its regional fair share for the 2007 - 2014 timeframe of the current Housing Element through this program alone.

In 1989, the Town removed prior restrictions on the construction and occupancy of residential second units; thereby making them part of the Town's available rental housing stock. Prior to that action, residential second units could not be rented and could only be occupied by relatives of owners or by individuals retained by property owners for on-site custodial and housekeeping activities.

Los Altos conducted a Second Unit Survey in 2009 to identify the number of existing residential second units and monitor the success of the secondary unit program in the production of affordable rental housing, as well as to gauge community interest in the development of additional residential second units. One of the questions posed in the survey addressed the amount of rent charged for residential second units. Four rental ranges were provided from which to choose, with the ranges selected because they closely matched the level of rent defined as affordable to households of very low, low, moderate, and above moderate incomes. The survey results on second unit rents are presented below.

Income Category	Rental Range	Rent Distribution for all units surveyed	Rent Distribution for post 1999 units surveyed
Extremely Low/ Very Low	No rent or Rent <\$800	50%	85%
Low	Rent = \$800 - \$1,200	24%	2%
Moderate	Rent = \$1,201 - \$1,800	12%	11%
Above Moderate	Rent = \$1,801 - \$2,500 or > \$2,500	14%	2%

Based on 2009 income limits set by the State HCD, the response on rental ranges indicates that approximately 50% of the Town's second units would be affordable to "extremely low to very low" income households (up to \$800 per month), 24% to "low" income households (up to \$1,200 per month), 12% to "moderate" income households (up to \$1,800 per month) and the remaining 14 percent to "above-moderate" income households (in excess of \$1,800 per month).

D. Amnesty for existing, unpermitted second units

There are a large number of existing second units in Lafayette which are not recognized by the City as they predate the Second Unit Ordinance and City's incorporation. Should the City adopt an amnesty program, it may be able to include these existing second units in its inventory as well. The main issue is whether the sites inventory will rely on these future units to meet its lower income numbers. In other words, if the City cannot meet its RHNA numbers without the amnesty program, the State will likely condition certification of the Housing Element on (a) adopting an amnesty program early on in the cycle, and (b) requiring the City to prove actual amnesty of the units in the amounts projected. In addition, all of the other conditions for second units noted above would apply (documenting rents, etc.).

E. City wide single-family residential

Based on the number of permits issued in past years, the draft inventories estimate that a certain number of above-moderate single family homes will be built during the next planning period.

F. Adjusting the maximum density to see if we can still achieve RHNA

The General Plan establishes a maximum residential density of 35 dwelling units per acre in the downtown (West End, Downtown Retail, Plaza, East End and the neighborhoods immediately south of the downtown). In the attached draft inventories, staff assesses the impacts of reducing the maximum density in parts or all of the downtown on the City's ability to meet RHNA. Reducing the density would allow a developer to seek a density bonus without exceeding the maximum density established in the General Plan. It also takes into consideration how Lafayette is currently developed and attempts to maintain that context and scale. It should be noted that the law does not allow a city to count density bonus units towards the adequate sites inventory and the accommodation of the City's RHNA allocation because density bonuses are elective and developers may or may not request a density bonus. Therefore, if the City decides to reduce the maximum residential density in certain areas, it can only count the lower housing capacity towards its RHNA allocation.

The three draft inventories assess the following maximum densities on the City's ability to meet RHNA. It should be noted that these are preliminary scenarios prepared for initial discussion purposes only. The final inventory will be developed after public review and input and with direction from the Planning Commission and City Council.

1. No change to the maximum density in the downtown of 35 du/acre.
2. Reduction of maximum density in the downtown to 26 du/acre.
3. Following changes to the downtown districts:
 - Downtown Retail and Plaza at 35 du/acre
 - East and West End at 26 du/acre
 - Residential Neighborhood II at 20 du/acre

Next Steps

I. Timeline and time constraints

Staff offers the attached schedule for the City Council's consideration. Prior to the mandated public hearings before the Planning Commission and City Council, the subcommittee and staff recommend that the City host workshops in April and May to gain public input. The schedule anticipates final adoption of the Housing Element update in December 2014 and submission to the State before the January 31, 2015 deadline.

II. Public workshops

The public review process is key to a successful housing element update in that it helps to identify the housing needs of a community, better understand a community's concerns, and educates the public about the State requirements. We suggest that the workshops focus on the following topics:

1. Housing Element Introduction
 - a. What is a Housing Element?

- b. Why is it required?
 - c. What are the implications of not having a certified Housing Element?
 - d. How does it relate to the Priority Development Area (PDA) and the Association of Bay Area Governments (ABAG)?
 - e. Which process should the City pursue for the update: streamlined review or the standard review?
 - i. Pros and cons of adopting a density bonus ordinance (required for the streamlined review).
2. Inventory
- a. Changes to inventory sites.
 - b. Ability for the City to count second units in its inventory (new and existing non-documented).
 - c. Adjusting the maximum residential densities and impacts on RHNA.
3. Policies and programs
- a. Governmental constraints that may impede the development of housing.
 - b. Policies and programs to be implemented after the Housing Element is adopted and certified that mitigate these constraints.

Staff Comments

The City has nine months to adopt an updated Housing Element. Within this limited period of time, it has to determine whether to opt for the streamlined review or standard review process, whether to adopt a local density bonus ordinance, whether to adjust the maximum residential density and how it will develop its inventory in order to meet its RHNA obligations. Should the City decide to pursue the streamlined review process, the density bonus ordinance would have to be adopted prior to submitting the draft Element to HCD for its initial comments. Based on our attached schedule, this means completing the draft Housing Element and density bonus ordinance by the end of July. While the public workshops in April and May will greatly assist the City in making some of these key decisions, in the interest of time, we suggest that the Council direct staff to begin drafting a density bonus ordinance. The ordinance can be tabled if the City Council at a later date chooses not proceed with its adoption.

Recommendation

Staff recommends that the City Council initiate the Housing Element update and the preparation of a density bonus ordinance.

Attachments

1. Schedule for Housing Element Update [DRAFT]
2. Inventory of Sites (3 preliminary options) [DRAFT]
3. Map of Inventory Sites (2007-2014)
4. Map of Inventory Sites (2015-2023) [DRAFT]

