

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council via the City Manager

FROM: William Prince, Community Development Director

DATE: Meeting of September 28, 2009

SUBJECT: Housing Element Update

RECOMMENDATIONS:

1. Rezone the mobile home park to mobile home uses only (as previously indicated), but reconsider rezoning the site to require a minimum density
2. Reconsider the option of rezoning selected R-1/ R-3 split zoned properties to satisfy the Regional Housing Needs Assessment.
3. Consider including an exception to the new minimum density requirements for the R-2, R-3 and new R-SWB (Southwest Bayshore) residential districts, to allow for additions up to 400 sq ft for existing single family homes.
4. Review and provide direction on the proposed revisions to the programs and policies.
5. Review and provide direction on the revised text of the Housing Element.

BACKGROUND

Previous staff reports on the housing element, have indicated that the current amount of land zoned for residential use (land inventory) does not have the capacity (acreage times density in units per acre) to satisfy the City's total regional housing need or the need in the three affordable categories (very low, low and moderate). At your July 13, 2009 meeting, Council selected the areas of the city to be rezoned to satisfy the Regional Housing Needs Assessment (RHNA) and continued the review of the policies and programs in the housing element to this meeting. The Council will recall that the RHNA, or projected housing need, is broken out into four (4) income categories including: very low, low, moderate, and above moderate (or market rate). To satisfy State housing law, the housing element must demonstrate that the City has sufficient land, zoned at minimum densities (land use inventory), to satisfy the total RHNA number (401) and the number of units allotted to each income category. Staff has revised the draft policies and programs since the July 13th meeting to be consistent with the direction provided by Council, at that time.

The combination of zoning amendments and rezonings selected by the Council were as follows:

- R-2 zoning district: Amend the district to set a minimum density of 20 units per acre.
- R-3 zoning district: Amend the district to set a minimum density of 20 units per acre.
- NCRO-2 district: Rezone approximately half of the first block of San Bruno Avenue to R-3 at 20 units per acre minimum.
- SCRO-1 district: Rezone the properties south of the mobile home park to residential only at 20 units per acre minimum, and rezone the mobile home park to mobile home uses only at 29 units per acre minimum. The properties within the SCRO-1 district that are north of the mobile home park will retain their current zoning.

The changes suggested by Council, along with the potential housing capacity of the City's existing residential zoning (including those units permitted since July 1, 2006), would provide a total capacity of 483 units. That is 82 units over the RHNA requirement of 401 units. Out of the potential for 483 units, 252 would be on land zoned at a density that would qualify in the very low and low income categories. However, the total number of units needed to satisfy the very low and low categories is only 157 units. The moderate income need is 77 units. The excess in zoning potential for the very low and low income categories ($252 - 157 = 95$) can be applied to satisfy the moderate income category (77), because land zoned at a density to accommodate the very low and low income categories can also (more than) accommodate the zoning capacity for the moderate income category. Thus, given the amendments and areas for rezoning selected by the Council, all three of the "affordable" income categories (very low, low and moderate) can be satisfied ($157 + 77 = 234$). There is also a sufficient amount of residentially zoned land remaining to satisfy the market rate category of the RHNA. ($401 - 234 = 167$).

Note that the calculated zoning capacity is somewhat higher than previously reported (July 13th meeting), based on further analysis of the potential of the rezone areas, the inclusion of the Redevelopment Agency site as very low, low, and moderate housing (based on further discussion with the Assistant to the City Manager) and rounding up rather than down in the R-2 district. The numbers previously provided indicated a total residential capacity for 454 units with 241 satisfying the need in the moderate, low and very low income categories. It should also be noted, that the calculation of the potential residential capacity of the City's existing zoning does not count towards the affordable categories, because it is not zoned at a minimum density of 20 units per acre. These zones (R-1, RBA, NCRO-2, SCRO-1 and PD) do not specify a minimum density, so their unused potential counts towards the total RHNA, but not the affordable towards the categories. Only the additional capacity that would result from adopting a 20 unit per acre minimum density standard in the R-2 and R-3 and the areas that Council has chosen to rezone, at that minimum 20 unit per acre density, apply to the affordable income categories. This is why it is not possible to both satisfy the affordable income categories and also create a total capacity that is exactly 401 units.

Since your last meeting, some members of the community have expressed concerns that amending the R-2 and R-3 zoning districts to establish a minimum density standard of 20 units per acre will make the existing single family homes in these zones “non-conforming,” thereby prohibiting expansions. Further discussion of this issue is provided in the following section.

In addition, staff has had the opportunity to study the minimum density of 29 units per acre for the mobile home park suggested by the Council, at the July 13th meeting. While the mobile home park may be protected by rezoning exclusively for mobile home use, the Council should reconsider the idea of establishing a 29 unit/acre minimum density for the reasons discussed below.

If the Council decides to respond to these concerns with changes that reduce the number of potential housing units available to satisfy the RHNA, they should off-set this reduction with additional changes to restore the potential capacity to meet the RHNA requirements. Staff recommends making up the difference, and creating a slight surplus in the RHNA low and very low income categories, by rezoning three properties, currently divided into R-1/R-3 zones, to R-3. Rezoning these three parcels so they are all R-3 would pick up several additional units of potential capacity and eliminate the three split zoned parcels. Split zoning parcels is not considered good planning, because the different standards that apply in each zone inhibits the uniform planning of a site. The rezone would clean up this problem. The rezoning would also help offset lost housing capacity, if the Council decides to provide a procedure (exception) to allow small additions to the existing single family homes that would become “non-conforming,” as a result of adopting the 20 unit per acre minimum density standard in the R-2 and R-3 zones.

DISCUSSION

The discussion summarizes the following:

- Community concerns regarding the impacts of establishing minimum densities.
- Density minimum on the mobile home park.
- Split zoned properties

Community Concerns

Since your last meeting, some members of the community have raised concerns that the establishment of a minimum density (20 units per acre) in the R-2 and R-3 zones would make existing single family homes legal non-conforming. While the issue of whether single family homes could be rebuilt if damaged or destroyed by fire was addressed in the June 13, 2009 memorandum from the City Attorney, the issue of making additions to legal nonconforming structures, as a result of adopting a minimum 20 units per acres density in the R-2 and R-3 zones, was not addressed.

Community concerns, regarding establishing minimum densities, have fallen into two major categories. These are the impacts on individual single family homes becoming legal

nonconforming and the impacts of increased density on the neighborhood in general. To help clarify matters, staff has included a comparison of the State's RHNA credits for low and very low income (based on 20 units per acre) and the City's Affordable Housing Ordinance.

Adoption of Minimum Density Standards & Legal Nonconforming Lots

Adopting a minimum density standard in any zoning district will have a number of implications. For example, a single-family house on a conforming lot (5,000 sq. ft.) in a district with a minimum density of 1 unit per 2,178 sq. ft. (or 20 units per acre) could not be replaced in kind, but instead would have to be replaced with a triplex, unless, per Government Code Sections 65863(b) & (c), the City can find that:

1. The reduction is consistent with the adopted general plan, including the housing element.
2. The remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584.

If these findings cannot be made, state law requires the City to identify "sufficient additional, adequate, and available sites with an equal or greater residential density in the jurisdiction so that there is no net loss of residential unit capacity...to accommodate the jurisdiction's share of the regional housing need" (GC Section 65584). In other words, if the Council wants to provide relief to the existing single family homes that would be made "legal non-conforming" by adopting the 20 unit per acres minimum density, in the multi-family zones, the lost potential for multi-family units needs to be made up, in order to maintain the RHNA numbers. This section of the State housing law is why staff is recommending that the Council provide some additional housing capacity in the affordable categories, by rezoning the three split zoned (R-1/R-3) properties to the higher density R-3 zone.

As explained by staff at previous meetings, providing some additional residential capacity above the minimum RHNA numbers also provides the city with some important flexibility, in the case where the Council may decide to deny a proposed housing project. As cited above, the State housing law requires that there be "no net loss of residential unit capacity" to accommodate city's share of the regional housing need RHNA. So, having some additional residential capacity provides the ability to make the necessary findings when taking action on a housing project. Otherwise, a revision to the housing element to add additional capacity would need to be made, at that time, to comply with the law.

In order to help address the concerns of homeowners who would like to add on to their single family home without having to convert it to a triplex, the Council may consider allowing a process for granting exceptions in the zoning ordinance. Although the State's position on allowing such exceptions is not known, since there is no precedent, staff is suggesting thresholds consistent with BMC 15.08.140 or 17.34.110. This would allow for, within any 5 year period, up to 50% improvement in market value or floor area, or additions up to a cumulative total of 400 sq ft. A suggested revision to a draft housing element program to address this is shown as underlined, "*Program H.C.I.c Re-examine the zoning ordinance regulations pertaining to*

nonconforming residential uses and structures to determine if further amendments to the regulations could facilitate private sector maintenance and improvement of these properties; including an exception to permit additions to nonconforming single-family residences of up to a cumulative total of 400 sq ft.”

In addition, there may be single homeowners who wish to demolish their older existing residence and rebuild a new residence in its place. Staff recommends that a provision be made to allow for this situation as well, subject to a limitation that the new residence be no more than 400 square feet larger than the demolished residence. This limitation would prevent excessively large replacement homes from changing the character of the neighborhood and be on par with the limitation on expansions to existing residences.

Lots that are legal non-conforming in terms of lot size would not be subject to the density requirement. This would include lots that are less than 5,000 sq ft, in the R-2 and R-3 districts, but were established as buildable lots prior to 1969. Lots in the new residential district south of the Southwest Bayshore mobile home park (“R-SWB”) would have the same exception for additions to single family homes up to 400 sq ft. Vacant lots that are less than 7,000 sq ft in the R-SWB district (a reduction in the existing standard lot size from 7,500 sq ft) would be required to be aggregated to the minimum lot size for development.

Comparison of RHNA Income Categories and the Brisbane Municipal Code

There has been some concern expressed over the large number of low and very low income housing units required as part of the RHNA and perhaps lack of clarity as to what this means in terms of actual units to be constructed. It is important to recognize that there is a significant difference between the state housing law requirement to satisfy the RHNA by demonstrating the potential capacity through the zoning of adequate sites, and the actual requirement to include affordable housing units in any development, pursuant to the City’s Affordable Housing ordinance. One is a demonstration of the theoretical capacity to accommodate housing within the jurisdictions land use or zoning plan, while the other is a requirement applied to new development to actually provide affordable units.

The State allows for small communities in the Bay Area, with populations under 25,000, to claim credit for very low and low income housing potential for residential zoned properties with minimum density requirements of 20 units per acre or more. However, most of the properties for which the City will take credit at this unit density will not be required to actually provide affordable housing, because the Affordable Housing ordinance (BMC Chapter 17.31) only applies to developments of 6 units or more. At the minimum of 20 units per acre, the threshold for a property to be required to have 6 units would be 10,891 sq ft. All of the lots in the current R-2 and R-3 districts, on which there is some remaining potential, are smaller than that.

For those properties where the Affordable Housing ordinance would apply, the requirement for units to be affordable to low, very low and moderate income households is in the range of 14 to 17 percent of the total number of units. This percentage applies to both units to be individually purchased and to rental units. Units to be purchased have this percentage requirement in the low

to moderate income categories, and for rental units the percentage requirement shifts to the very low to low income categories. While the State allows for RHNA credit in these income categories and will require the establishment of minimum densities in the zoning ordinance, there is no requirement that Brisbane's Affordable Housing ordinance be modified to require the smaller developments to actually produce RHNA units. Given the relatively small number of sites that are 10,891 sq ft or more (currently none in the R-2 and R-3 districts and only 8 properties in the SCRO-1 and R-SWB districts), the actual expectation for affordable housing is significantly lower than might be implied by the number of units that would be credited to the RHNA moderate, low and very low income categories.

As indicated, given the preponderance of relatively small lot sizes within the districts zoned for residential and the allowable densities, there is only a modest potential for affordable units under the City's Affordable Housing Ordinance. The breakdown is as follows:

Northeast Ridge PD District: No affordable units are planned for this development.

R-1 and R-2 Districts: No properties would fit the criteria to require affordable housing.

NCRO-2 District: The Redevelopment Agency's site, at 163 Visitacion Ave./348 Monterey St., would have a reasonable potential for 5 units to be developed with Redevelopment funds, which would require that they be affordable in the moderate, low and very low income categories.

R-3 District: None of the properties with further potential for development are at or above the 10,891 sq ft threshold for development at 20 units per acre, except 298 San Bruno Avenue if the split zoning were corrected (see split zoning discussion below). If the maximum density of 29 units per acre were applied, two properties could be developed with up to six units. These are the aggregate of 36 and 50 San Bruno Avenue (next to the Teen Center) and the church site at 298 San Bruno Avenue. So the yield would be 0 to 2 affordable units district wide, at 20 to 29 units per acre respectively.

R-SWB District: Only 5 properties would be at or above the 6 unit threshold, based on the minimum 20 units per acre. At 20 units per acre these 5 properties could net 49 units, 7 of these units would be required to be in the moderate, low, or very low income categories. At the maximum density of 29 units per acre 7 properties would be above this threshold and could net 81 units, with 12 of these being affordable to moderate, low or very low income households.

SCRO-1 District: The remaining SCRO-1 district north of the mobile home park will include 3 properties, each of which could be developed with 6 or more units. Based on site specific analysis these properties could yield a total of 50 units with 7 of those being in the moderate, low or very low income categories (this includes the "Ng" property for which planning permits have been granted).

R-MHP District: Given the large amount of grading and large retaining walls that would be required to develop the mobile home park to accommodate an additional units, it is not

anticipated that any additional units would be added to the mobile home park during the Housing Element period.

Therefore, the City-wide realistic projection of potential new units affordable to moderate, low, and very low income households would be in the range of 19 to 26 for this Housing Element period, were it not for the State's (exaggerated) assumptions regarding the potential affordability of development in districts with minimum densities of 20 units per acre.

Rezoning the Central Portion of the SCRO-1 (Mobile Home Park) to R-MHP

Staff understands that Council wants to conserve the mobile home park. Council suggested that the zoning be for mobile home park uses only, so the site would not be lost to other types of housing serving the needs of higher income households. Therefore, the use shown in the draft Housing Element is mobile home park (R-MHP). However, the 29 unit/acre minimum density suggested by Council would be a significant increase over the site's current density of 19.5 units per acre. If accepted by HCD, the suggested density would yield a theoretical minimum of 93 units at the mobile home park, or 31 over its existing 62 units. Given the site constraints (discussed further below), it is unlikely that HCD would accept this additional capacity as feasible. Since the July 13th meeting, staff has determined that there would be adequate capacity to meet the RHNA requirement without increasing the density of mobile home park site, if the Council rezones three R-1/R-3 split zoned properties to R-3 (discussed below).

Staff's review of the property indicates that there is insufficient capacity to accommodate additional mobile home units on the site. Unlike other residential areas, a mobile home park cannot be built higher to achieve the increased density specified and the existing developed area appears to already be at its capacity for mobile homes. Staff's review indicates that there is inadequate space to expand to this number of mobile homes, even if the mobile home park were to undertake the expense of the massive grading and the construction of the retaining walls (on the order of 30 feet high, or more) necessary to add homes up the hillside (up to approximately 25 additional small spaces at the upper limit).

Grading and construction of retaining walls would result in significant cost and disruption to the site and loss of the potential for butterfly habitat restoration within this area of the HCP; and it still would not provide enough land area to achieve the indicated density. With the cost of construction it is reasonable to expect that these units would not be affordable to low or very low income households.

Establishing a minimum density of 29 would make the existing density (19.5 units/acre) legal non-conforming, raising questions about the regulation of the existing mobile homes. Unlike residential properties in the R-2 and R-3 districts, the underlying property is owned separately from most of the mobile homes. So if an upgrade (or replacement) was proposed to an existing mobile home how would the City regulate it? The City cannot prevent the existing mobile homes from being relocated out of the park, because they are privately owned. Would the City require that if an owner of an older mobile home wanted to upgrade to a new mobile home that

the new higher density would be enforced? Mobile homes are currently regulated by the State Department of Motor Vehicles, as enforced through the County of San Mateo. How would these agencies come into play? Given the costs and the potential value from adding mobile homes to the site, it doesn't appear economically feasible to take advantage of the increased density. On the other hand, if the up zoning were to provide sufficient incentive, it might trigger a change away from affordability. That could work at cross purposes with the intent to protect one of the City's more vulnerable resident groups.

Finally, the deletion of 31 potential mobile home park units from the RHNA capacity count will reduce the totals that were provided to the Council during the July 13th meeting. However, these numbers have largely been made up elsewhere (in the R-2 and NCRO-2, as previously indicated); so that the moderate, low and very low income categories would total 233 and the total RHNA would be 452. That is 1 unit under the RHNA requirement for the lower income categories and 51 over for the total RHNA (401). The small shortage in the lower income category could be made up through rezoning split zoned properties.

R-1/R-3 District Split Zoned Properties

Although the Council did not select the option of rezoning the split zoned properties to increase potential housing capacity, there is some limited potential to expand the R-3 District, by rezoning three split zoned properties that are partially located in the R-1 District. As a general planning rule, individual parcels should not be split between two or more zoning districts, because the difference in the standards that apply in each district can create conflicts that make it difficult to plan a site as an integrated whole. The Housing Element update provides an opportunity to "clean up" the zoning on these sites and to pick up some RHNA numbers as well. This would offset some (5 units) of the reduced housing capacity that will result, if the City adopts a process to grant exceptions to allow small additions to the existing single family homes, rather than require that they redevelop at the new minimum density, of 20 units per acre.

There are 3 such split zoned sites, which could add a potential of 5 more units to the RHNA low and very low income categories:

43 Alvarado Street (APN 007-233-060): This 6,348+/- sq. ft. property is south of the apartment building at 21 Alvarado Street and is zoned R-1 (1 lot) and R-3 (2 lots). If it were rezoned entirely to the R-3 District, its development potential would increase by 3 units from 1 (the existing house) to 4.

298 San Bruno Avenue (APN 007-284-240): This 11,693+/- sq. ft. property is at the corner of San Bruno Avenue and Mendocino Street and is zoned R-1 (1 lot) and R-3 (4 lots). If it were rezoned entirely to the R-3 District, its development potential would increase by 1 unit from 6 to 7. The church on this site was built in 1948 and is currently owned by the Baptist Church, although it is not in active use as a church.

285 Alvarado Street (APN 007-363-050): This 9,800+/- sq. ft. is at the corner of San Bruno Avenue and Alvarado Street and is zoned R-1 (1 lot) and R-3 (3 lots). If the property were rezoned entirely to the R-3 District, its development potential would increase by 1 unit from 4 to 5. The site is in current use by the Catholic Church.

SUMMARY

The draft goals, policies and programs matrix and a draft housing element text are provided as attachments (including a red lined version) to this staff report for Council's consideration. When the Council has made their final decisions, a complete draft of the housing element will be sent to HCD for their review. HCD can find that the element satisfies the State law, would satisfy the State law if certain revisions are made, or that it is not in compliance with state law. HCD found the city's existing housing element in compliance with state law, subject to some relatively minor changes (which were subsequently implemented). The benefit of having a housing element found in compliance with the state law is a presumption of validity should a party legally challenge the adequacy of the housing element of the general plan. The burden of proof would be on the challenging party. The Council may recall that the housing law requires the city to submit annual progress report to HCD that describes the progress made implementing housing element programs and the number and types of units that have been built during the past year.

As part of the preparation of the draft Housing Element, staff prepared a comprehensive list of all properties in the City where there is new housing potential. This list is based on the City Council's direction from the July 13th meeting. Without adding any other sites, but with the removal of the potential increase in density to the mobile home park from the RHNA, as suggested by staff, the total RHNA would be 452 and the moderate, low and very low income categories would total 233. That is 49 above the total RHNA requirement and 1 under the RHNA requirement for moderate, low and very low income households. If the Council were to include the split zoned properties, adding 3 lots to the R-3 as indicated above, that would increase both of these totals by 5 units (to 457 for the total RHNA and 238 for moderate, low and very low income) and allow loss of up to 4 units from the lower income categories by variance.

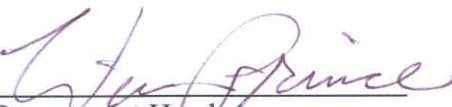
The following chart shows the comparison between the State's required RHNA and what the City's RHNA credit would be based on either the direction from the July 13th City Council meeting or with the revisions suggested.

	State's RHNA Requirement	City's RHNA Based on July 13 th Mtg**	City's RHNA Without Mobile Home Park Min. & With 3 Split Zoned Properties
Very Low Income	91	252	226
Low Income	66		
Moderate Income	77	12*	12*
Above Moderate Income	167	219	219
Total	401	483	457

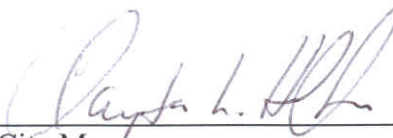
* The very low and low income units over the required RHNA are applied to the moderate income category.

** The totals are based on the direction provided by City Council and have been corrected upward (as shown here) based on further review.

FISCAL IMPACT/FINANCING ISSUES: None.



Department Head



City Manager

ATTACHMENTS:

- A. Map of Rezones with Three Split Zoned Parcels (shown in red)
- B. Housing Element Goals, Policies and Programs Matrix (in binder pocket)
- C. 2006-2014 Draft Housing Element (in binder)
- D. 2006-2014 Draft Housing Element Redline Version (in binder)

HOUSING ELEMENT UPDATE
AREAS INDICATED FOR
ZONING CHANGE

