

City of Brisbane
Agenda Report

TO: Honorable Mayor and City Council

FROM: William Prince, Community Development Director

DATE: Meeting of June 1, 2009

SUBJECT: Update to the Housing Element

RECOMMENDATION:

1. Review the background materials, discuss the options to satisfy state housing law, including the RHNA, and provide direction to staff for the update to the housing element.
2. Review the matrix chart of the goals, policies and programs (Attachment 11) and provide direction to staff on any changes Council would like to see made.

PURPOSE: To complete the draft housing element update and comply with state law.

BACKGROUND:

Over the past years, the Housing Element has become the most complex element of the general plan and recent legislative changes have prompted some prominent legal authorities to claim that “in some respects, the housing element has been elevated above other required elements of the plan” (Talbert and Curtin 2008). That is an interesting observation, given the previously accepted legal understanding that all of the elements of the general plan are supposed to be of equal legal standing. The observation is related to the limitations imposed on the conditions of approval and the specific findings required for the denial of certain affordable housing projects.

In any case, the housing element is the only general plan element that is required to be updated within a specific five year time frame, although that time frame has routinely been extended, usually because of state delays in providing the numbers upon which the Regional Housing Needs Allocation (RHNA) process is built. Annual housing progress reports on the implementation of the element are also required to be submitted to the state. The city last submitted an annual report, in March of this year. Because of state extensions, the time period for this update to the housing element is from July 1, 2006 to

July 2014. Staff anticipates submitting a draft housing element to the state for review, by early to mid July.

The City's existing housing element was adopted in 2002. The City's housing element was found to be in compliance with state housing element law, as interpreted by the state reviewing agency, the Department of Housing and Community Development (HCD).

That being the case, staff has primarily proposed changes to the existing housing element that reflect new requirements of housing law adopted since 2002 (further explained below), the current RHNA numbers, and changes to the demographic characteristics of the community.

The existing housing element consists of six sections (or chapters) that cover all the mandated topics, at the time when it was adopted. These sections include:

Section I - Preparation of the 1999-2006 Housing Element. This section includes the stated purpose of the element and a review of the, then existing (1994) housing element.

Section II - Community Characteristics and Housing Needs. This section includes a break down of the 2000 Census (age, household size, etc.). See attached draft update to this section – Section II

Section III – Land Inventory and Identification of Adequate Sites for Regional Housing Needs. This section includes an analysis of the housing development potential in the various land use sub-areas of the city.

Section IV – Housing Constraints. This section includes an analysis of the governmental and non-governmental constraints to the development of housing (infrastructure, fees, land available, financing costs, etc.)

Section V - Meeting Housing Needs. This section includes housing availability, affordability and quality.

Section VI – Housing Policies and Programs. This section includes the goals, objectives, policies and programs of the element.

While, as mentioned, the existing element was found “in full compliance with state housing law,” that finding was conditioned upon the successful implementation of certain programs in the element. Each time a new draft element is submitted to the state it is reviewed for, among other things, the completion of these conditions. The city has since completed all of the programs noted by HCD in their certification letter for the existing housing element (dated December 12, 2002).

As the Council is aware, the general plan is the “constitution” for the future development of the city and all discretionary projects (development permits) must be found “consistent” with the general plan. Further, the general plan must be legally adequate, which essentially means that it includes all the required elements (subject matter) and the

elements (land use, housing, circulation, etc.) must be “internally consistent.” In other words, the background data should be consistent and there should be no contradictory policies. If a city’s general plan is found to be inadequate, a discretionary land use approval (which requires a consistency finding) is vulnerable to legal challenge, if the inadequacy in the plan is relevant to that approval. The value of having a housing element found “in compliance with state law,” is that it represents a presumption, at least regarding housing issues, that the general plan is adequate. Not to mention, the possible interference (by HCD) with certain state grant money if a plan is not in compliance.

New Housing Laws

AB 2348 (Mullin) - This law requires a more detailed analysis of the sites identified to satisfy the RHNA. It specifies that the capacity to accommodate affordable housing must be based on a “minimum” designated density.

AB 1233 (Jones) - This law only applies in the case where a previous element didn’t identify adequate sites. This should not be an issue for Brisbane, since the previous housing element did.

SB2 (Cedillo) - Requires the housing element to identify at least one zone where emergency shelters are allowed by right (6 month stay). Also, extends Anti-NIMBY protections to transitional rental housing (for greater than 6 month stay) and supportive housing (no limit on stay) occupied by low income persons with disabilities (AIDS, substance abuse or chronic health conditions).

SB1087 (Flores) – Requires water and sewer providers to give priority to affordable housing projects.

AB 2634 (Lieber) - Establishes an “extremely low income” category of housing need (can be 50% of the very low income need) and provisions for “supportive housing” or single room occupancy units.

AB 2280 Saldana – This legislation added requirements regarding density bonus provisions. The city is not in conflict with this requirement, given recent adoption of the inclusionary housing and density bonus ordinance).

Greater detail on these bills can be found in the Planning Commission staff reports (April 30, 2009 and May 14, 2009, attached)

DISCUSSION:

The City’s Regional Housing Needs Allocation (RHNA) number of 401 units consists of: 91 very low income, 66 low income units, 77 moderate income units and 167 above moderate (market rate units). Demonstrating that the city’s land use inventory has the capacity to accommodate these numbers is essential to complying with state law. In

other words, sufficient land designated and zoned for residential use at densities considered “feasible” for affordable housing projects is the test.

A staff analysis of the city’s current land use inventory demonstrates that there is insufficient residential land use capacity to meet the total RHNA assessment (401 units) and for the various affordable income categories that make up the RHNA (see Table H under the heading “Recent and Existing Capacity”). The analysis shows that in addition to the 43 building permits have been issued since the new housing period began (see total of column A-1 Table H – under total permits issued by 12/31/08), there is an estimated 316 unit remaining capacity of the existing zoning districts (see total of column Row B-1, Table H). The city’s current residential land use capacity of 359 units falls short of the 401 unit total necessary to satisfy the RHNA and far short in the affordable income unit ranges (see totals for columns A2 & A3 & B & B3). Only 7 of the previous building permit issued and 10 of the “existing potential” units, under the existing zoning, could be counted towards the very low, low and moderate affordable income categories.

After analyzing the residential land inventory and noting the shortfall in capacity, staff considered the various ways in which the RHNA numbers might be met. Some of the options represent relatively minor changes to the existing zoning standards, like establishing minimum density standards, waiving the variance requirement for substandard lot dimension standards, in cases where the lot meets the minimum size standard (i.e. 5,000 sq ft), and small expansions of the R-2 zone, at the expense of the R-1 zone district (particularly on streets with adequate right-of-way). One of the key changes, in this group of possible changes, is to set a minimum density, in the multi-family zones, at 20 units per acre. Currently these districts only have a “maximum density” standard, not a “minimum density standard,” so there is a distinct possibility that they will not be developed to their potential capacity (i.e. single family residence in a multi-family zone). The problem, from a housing capacity standpoint, is that these parcels cannot be counted toward the affordable unit need, without minimum density standard of 20 units per acre, which the state considers to be the minimum density necessary or “feasible,” to spread the costs of the affordable units, over the market rate units.

The government code section related to this issue is cited below (see below under Government Code Section 65583.2). The bottom line is, that in order to count towards the affordable housing unit capacity, the minimum density must be set at (at least) 20 units per acre (see subsection B of Government Code section cited above). The alternative, (GC cited - subsection A), requires a demonstration that the existing zoning could accommodate the need. The evidence that this is not currently the case, is evidenced by the staff analysis of residential capacity (Table H) and by the city’s experience with affordable projects. For the most part, except in the case of heavily subsidized not-for-profit projects, the market can’t produce a sufficient number of affordable units to meet the need. Notice the gap between the existing potential (Table H, column A2 & A3 & B2 & B3) and the RHNA need for low and very low.

Table H summarizes the additional housing unit potential from making a number of relatively minor changes to the zoning ordinance, like the minimum density standard change (discussed above). The headings at the top of each column, the **bolded** numbers in the columns and the numbers in the parentheses under some of the **bolded** numbers, explain the additional potential gained by these changes. For example, the column heading for column C.1 indicates that the numbers in that column represent the additional unit potential from changing the zoning ordinance to add a minimum density standard for multi-family zones (discussed above) and eliminating the need for a variance for lots that meet the minimum parcel size (i.e. 5,000 sq. ft.), but don't meet the required lot dimensions (width and length). In other words, an additional potential for 10 units (number in bold) in the R-1 zone from eliminating the variance requirement and a 3-9 unit gain from adopting a minimum density standard. In column D.1 (see column heading), the total potential in the R-1 zone (or row) for 28 second dwelling units is possible, by making the aforementioned zone change (lot dimensions) and reducing the parking requirements, (explained in previous staff report to PC).

In order to provide more options for consideration, than simply trying to accommodate the additional housing units by small adjustment to the existing zoning districts, staff developed two other general approaches to spreading the mix of densities around the core area of the city. Both involve rezoning Trade Commercial zoned parcels, along the edge Crocker Park, to residential or mixed-use (residential and commercial). Thus, there are three global "alternatives" provided in Tables H.A, H.B and H.C. Note that all three tables have the same "Recent and Existing Potential" on the left side of the table, the additional potential unique to each alternative in the middle section of the table, and the grand total potential (made up of the existing and the additional potential from each option) on the right hand side of the table. Each table also breaks out the very low, low and moderate income unit potential to satisfy the RHNA. For convenience, the RHNA requirement is repeated in the bottom right hand box of each table. During the process of identify any sites that could accommodate the RHNA, staff was mindful of the housing law requirements, including the most recent changes, mentioned previously.

The staff developed the three alternatives based on previous public input and Commission and Council discussions, during review of the land use element. At that time, various sites around the city were considered for residential development and the Council did indicate a preference to "consider" three sites, along the edge of Crocker Park, for rezoning to residential. It is staff's understanding that this might be accomplished with an "over-lay zone" (i.e. TC-R-3) which would allow residential development without disturbing the underlying trade commercial zoning. Using this approach to satisfy some portion of the RHNA would depends on HCD's willingness to accept, as reasonable, the assumption that said residential development could take place, over the housing cycle period, and that the existing development would not be an "impediment" to the development of housing. Part of that argument could be the age of the existing building(s) past redevelopment trends for of similar sites, the size and location of the site, and the interest of the landowner in a different (residential) use. Otherwise, rezoning to either residential or mixed-use (only 50% of mixed-use sites count towards RHNA) would be necessary, in order for the site to apply towards the

required RHNA unit need. Rezoning also makes the existing use legal non-conforming which prevents expansions of that use. Any sites selected to satisfy the RHNA, would require a program (as is also true for any of the other changes to the municipal code discussed previously), to demonstrate to the state that the sites would be rezoned, as necessary, within a certain amount of time (3 years), after adoption of the housing element.

It is important to note, that all three alternatives developed by staff could meet the RHNA numbers. This is shown by the grand totals section, on the right hand side of the tables. It should also be noted, that each alternative would actually exceed the total RHNA requirements (excess low and low income capacity can be applied to the moderate category). Finally, it should be recognized that there a number of reasons to provide excess residential capacity, in any land use plan. While the immediate task is to have a housing element that complies with state law, the general plan has a longer time horizon and a “sustainable” general plan reflects a balance of land uses (for jobs, housing, shopping, civic uses etc.) and includes consideration of “social equity” which a range of housing types provides. Secondly, if the city wants to encourage sustainability, some additional land zoned for residential provides a greater selection and hence greater market choice for residential developments. Not all the sites zoned for residential are going to be available at the same time, since that depends on a willing seller, or a property owner who has the capability, at any point in time, to obtain financing and go forward with a project. It is also the case, that for parcels that are already “partially developed” (i.e. 125 Valley), the law requires an explanation of why the existing development is not an “impediment” to the development of housing. Thus, HCD could reject some sites that have been proposed to satisfy the RHNA and having the additional capacity provides some flexibility to meet this potential challenge.

The Planning Commission discussed the three options and favored Alternative B, deriving the additional need from the rezoning of parcels along the edge of Crocker Park. Table H.D (attached) provides more detailed information on each of these TC zoned parcels that would be candidates for rezoning under this alternative. It is important to remember, that this is largely a “theoretical exercise” and what actually takes place will be driven by the real estate and financial markets. However, zoning does send a signal to the market about development potential and that’s why the state wants to see housing encouraged with sufficient zoning capacity.

Government Code Section 65583.2 - Regarding Identified Sites and Density

A city’s or count’s inventory of land suitable for residential development pursuant to paragraph (3) of subdivision (a) of Section 65583 shall be used to identify sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction’s share of the regional housing need for all income levels pursuant to Section 65584. As used in this section, “land suitable for residential development includes all of the following:

- (1) Vacant sites zoned for nonresidential use.

- (2) Vacant sites zoned for nonresidential use that allows residential development
- (3) Residentially zoned sites that are capable of being developed at a high density
- (4) Sites zoned for nonresidential use that can be redeveloped for, and as necessary, rezoned for residential use.

There then follows a number of details about the inventory (listing individual parcels, a general description of environmental constraints etc.). The law goes on to say that “the analysis shall determine whether the inventory can provide for a variety of types of housing, including multi-family rental housing, factory built housing, mobile homes, housing for agricultural employees, emergency shelters and transitional housing.”

In addition:

“For the number of units calculated to accommodate its share of the regional housing need for lower income households a city or county shall do either of the following:

(A) Provide an analysis demonstrating how the adopted densities accommodate need. The analysis shall include, but is not limited to, factors such as market demand, financial feasibility, or information based on development project experience within a zone or zones that provide housing for lower income households.

(B) The following densities shall be deemed appropriate to accommodate housing for lower income households:

- (iii) For suburban jurisdictions: sites allowing at least 20 units per acre”

Brisbane is on the list as a suburban jurisdiction.

CONCLUSION

All three alternatives could satisfy the RHNA. Other combinations of these actions are possible. It is largely a matter of determining the preferred allocation of the additional density necessitated by the projected housing needs (RHNA), over the housing cycle. As previously noted, these alternatives reflect the public discussions that took place, during the land use element update, and the information imparted, by the Bayland’s Speakers forum, on the importance of the smart growth, new urbanism model of development to the reduction of vehicle miles traveled and global warming. Not to mention, the other benefits of good place making. The subject matter of the housing element is an integral part of the discussion of a sustainable general plan.


It is useful to keep in mind, that the RHNA is largely a “theoretical numbers exercise” with no penalty for failure to achieve these numbers. The numbers don’t roll over to future cycles. At least, historically speaking, each cycle has started a new calculation of

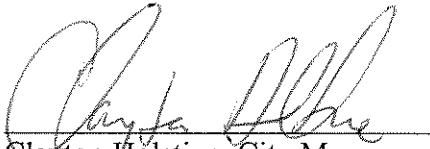
the RHNA number (a zero-base process). With the exception of subsidized housing projects, the market typically dictates what will happen. Past experience indicates that the projected RHNA numbers are typically well above what the market circumstances will actually produce. However, the real purpose isn't just a "theoretical debate, the heart of the matter is the intent of the city as expressed by the goals of the housing element. The value to the legal adequacy of a general plan from having a housing element found in compliance with housing law (by HCD), has already been mentioned. Many of the legal issues surrounding the housing element were presented to the Council, by Barbara Katz, the Attorney and housing law specialist (Goldfarb and Lippman), during Council's deliberations on the RHNA numbers.

The Planning Commission unanimously recommended Alternative B, rezoning the parcels along the edge of Crocker Park to residential and mixed use. This is consistent with their recommendations on the land use element. The land use and housing element should strive to minimize land use conflicts, recognizing there will always be "edges" between uses (zoning districts). The Commission and staff largely feel that it would be better to have a clean slate for the design of additional residential capacity, then to try to retrofit it into the historic subdivision of the city. The edge of Crocker Park obviously provides that opportunity. It also provides an opportunity to enliven the social and economic life of the city.

The Commission also recognized that under the existing general plan, residential use is prohibited on the Baylands. However, general plans are not cast in concrete. It is well recognized that general plans should be amended as new information (remediation science, global warming, etc.) and planning concepts (i.e. smart growth, sustainable development etc.) evolve.

It appears that a carefully designed downtown, or village, will require a specific or master plan (as implied by the Fred Kent, PPS report) to ensure that it is done wisely, rather than haphazardly, with due consideration for the provision of public space. Perhaps, in conjunction with a rezoning the Council should require the preparation of such a plan. It may be that the owners of the first property to request development should prepare the plan, with potential reimbursement from the other rezoned properties as they eventually redevelop. The city might also want to participate in funding such a plan, especially if the redevelopment area was expanded to include this area, in order to getting things started.


William Prince, Community Development Director


Clayton Holstine, City Manager

Attachments:

1. Planning Commission Staff Report of May 14, 2009
2. Planning Commission Staff Report of April 30, 2009
3. Planning Commission Minutes of May 14, 2009 (draft)
4. Planning Commission Minutes of April 30, 2009 (draft)
5. Table H City-wide Options Menu
6. Table & Figure H. A Alternative A: Changes All Within Existing Residential Zoning districts
7. Table & Figure H.B Alternative B: Primarily Rezoning selected Crocker Park Sites + R-1 & R-3 Zoning Text Amendments
8. Table & Figure H.C Alternative C: Primarily Changes to Selected Residential Districts + Rezoning 125 Valley, 25 Park Place and 43 Park Place
9. Table H.D Detail of Crocker Park Potential Housing Units
10. Section II Community Characteristics and Housing Needs (draft)
11. Goals, Policies & Programs Evaluation Matrix