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## City staff update council on upcoming housing element

By Sora O'Doherty

The dreaded housing element, a requirement for how much housing each town, city and county in California must provide for, is coming up again. The housing element runs in eight-year cycles. The current cycle is 2015-23, and planning is now starting for the next cycle, which must be adopted by Jan. 31, 2023.

Recognizing that local governments play a vital role in developing affordable housing, in 1969 California mandated that all cities, towns and counties must plan for the housing needs of residents - regardless of income. This state mandate is called the Housing Element and Regional Housing Needs Allocation. As part of RHNA, the California Department of Housing and Community Development (HCD) determines the total number of new homes the Bay Area needs to build - and how affordable those homes need to be - in order to meet the housing needs of people at all income levels.

The Association of Bay Area Governments (ABAG) then distributes a share of the region's housing need to each city, town and county in the region. Each local government must then update the Housing Element of its general plan to show the locations where housing can be built and the policies and strategies necessary to meet the community's housing needs.

The staff presentation was introduced by Director of Planning Drummond Buckley and presented by Jennifer Gastelum of Placeworks. The staff included an update on recent state legislation bearing upon the housing element. They also fielded questions from the council.

The most difficult "piece of the pie" for Orinda will be the site inventory, Gastelum said. This is owing to the large increase in the RHNA numbers. In the fifth cycle, Orinda's RHNA number was 227, but the draft sixth cycle jumps that number up to 1,359.

Vice Mayor Dennis Fay asked about a controversy over double counting by HCD in the RHNA numbers. Buckley responded that the Embarcadero Institute talked about some double counting of RHNA numbers. According to the Embarcadero Institute, the double count was an unintended consequence of Senate Bill 828, and has exaggerated the housing need by more than 900,000 units in four regions in California, including the greater Bay Area, which along with Southern California are the most impacted by the state's methodology errors.

The presentation covered penalties for non-compliance, which include, among others, a city's general plan being found inadequate, a city being vulnerable to lawsuits and fees, and losing local control over land use decisions through court intervention (AB 72). AB 101 provides for fees of between \$10,000 and \$100,000 per month for continuing non-compliance after one year, increasing over time. In case anyone was wondering what might happen to the city if it failed to comply, Buckley directed attention to what happened to Pleasanton, which was sued by the Urban Habitat Program. The case was eventually settled, with the city paying almost \$2 million of the plaintiff's legal fees and agreeing to stop capping growth in the city.

Council Member Darlene Gee asked about the myriad pieces of pending housing legislation. "How does that play into what happens with our housing element?" she wondered. "If new legislation becomes law, does that have to be incorporated?" She also asked about currently pending lawsuits, particularly those from Southern California.

Gastelum responded, "nothing is off the table" and pointed out that AB 686, a bill that requires public agencies to administer its programs and activities relating to housing and community development to affirmatively further fair housing, is already law. She reviewed the potential effects of AB 1397 affecting non-vacant sites; SB 166 on no net-loss zoning; SB 35 on streamlined approval for housing projects; SB 330, the housing crisis act of 2019; and the housing accountability act, adopted in 2017.

Orinda is considered a metropolitan area with a default density set at 30 units per acre, which is presumed to be suitable for lower income housing. In public comment Nick Waranoff said that he is working with a statewide group on the housing issue. The central problem, in his opinion, is that to meet its RHNA goal, Orinda would need 25 acres at 30 units per acre. But, he pointed out, Orinda does not have 25 acres of vacant land. Therefore, he concluded that the housing element will have to focus on non-vacant lots. This will require knowledge of every existing lease, Waranoff said, and the city will have to go well beyond RHNA numbers in order to account for the reality that not everything zoned for will be developed.

According to Gastelum, whether talking about a vacant site or a non-vacant site, to be considered adequate sites must be available for residential use during the planning period, have infrastructure availability, and be free from unmitigable environmental constraints. She added that the city may need to consider zoning updates to increase available density and adjustments to development standards, such as parking, open space, height and lot coverage.

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