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Lafayette first draft Housing Element moves to HCD for review

By Lou Fancher

Following a lengthy discussion that included public comments at the June 27 meeting, the city council reviewed, revised, and directed staff to submit an updated Housing Element draft on June 28 to the State Department of Housing and Community Development (HCD). In December 2021, the Association of Bay Area Governments Executive Board applied the Regional Housing Needs Allocation plan to all California cities and set Lafayette's RHNA at 2,114 units; an increase of 429% from the previous cycle.

Dominating the discussion at the meeting were issues relating to the city's responsibilities and approach for implementation of BART Transit-Oriented Development (TOD) standards under Assembly Bill 2923. Additional council and public comments centered on specific language and details included in the draft, especially in reference to upzoning, spot zoning or overlays; the definition of infrastructure; the perils and advantages of mentioning housing development plans in other cities or regions as models for Lafayette; and community interest in resisting over-development and retaining the area's semi-rural integrity.

The staff report presented by Housing Consultant Diana Elrod, Planning Director Greg Wolff and Senior Planner Renata Robles explained how state law requires cities to demonstrate the community is able to accommodate housing quotas established by the state and meet the related requirements, such as preparing a Draft Environmental Impact Report and more. HCD will have two 90-day review periods. When HCD has completed its review of the draft submitted on June 28, Lafayette can expect to receive a comment letter in the fall.

Of the 48 public comments received between May 6 and June 6, Elrod said most residents centered on the Opportunity Sites Inventory and text incorporated in the draft document that emphasized not upzoning to high-density housing in the downtown core, limiting BART development zoning to the minimum required (75 dwelling units per acre, per AB 2923), strengthening the incentives for Accessory Dwelling Units (ADUs), excluding Happy Valley Glen and DeSilva South as opportunity sites, and locating affordable housing close to high resource areas.

Elrod explained that Housing Elements have to be actionable, with specific timelines for completion of programs and evidence or certification that land for housing development can be located and is properly permitted. Special populations must be supported by projects that include affordable housing and programs offering incentives such as reductions in fees for ADUs to encourage their development. Other programs must update and monitor compliance with rules issued by the state during what appears to be an ever-evolving development processes. Failure to comply with or meet Housing and Community Development deadlines or standards the council was repeatedly reminded, could result in consequences such as loss of control of programs, loss of funding, fines up to \$10,000 per unit per day up to \$600,000 per month, and more.

Elrod outlined two meetings held to discuss concerns raised by Lafayette resident Colin Elliott about potential negative consequences resulting from proactive upzoning of the BART parking lots. City staff, Mayor Teresa Gerringer and Council Member Susan Candell met on June 21 and 22 with BART TOD staff representatives Kamala Parks and Deb Castles to discuss the topic.

Clarifications in the packet available online include details and an FAQ sheet with similar questions regarding BART property zoned for housing development that were raised by West County residents in the Ashby BART process. Elrod said Lafayette is not in the 10-year work plan that BART has established and will not be included in the next housing element cycle. Once again, a warning was issued: If Lafayette does not take action to meet the BART TOD work plan, over 820 units will need to be allocated elsewhere in the city and would require upzoning, according to staff.

Important among other considerations, development on BART sites is complicated and can take several years. During the predevelopment phase of a specific project, BART works with jurisdictions to determine the best approach to obtaining funding that may or may not include grant funding and partnering transportation entities. State Density Bonus Law is applied irrespective of whether the city upzones the AB 2923-eligible parcels or whether the statutory TOD standards apply by default, the report noted. Local zoning impacts future development on Housing Element sites, as do concerns community members may have about parking, pedestrian access, and other issues.

The staff report emphasized that "AB 2923 is a 'blunt' instrument that does not include objective design standards or other ways to mitigate development concerns. These objective design standards are a means by which the city can use local control to establish a vision for the site that incorporates community priorities, which would not be possible if the city were to simply allow the AB 2923 TOD standards to apply by default." The report went on to say, in part, "If the city is committed to developing a project on this (BART parking lot) site, not upzoning the sites signals a disengagement in the development process. The city's demonstration of genuine efforts towards proactively implementing AB 2923 can not only help the city move up in the TOD Work Plan timeline, but also increase the likelihood that HCD will accept BART as an opportunity site."

Ultimately, it was determined Lafayette will apply to the area an overlay district, not upzoning, that Wolff explained is equivalent to additional zoning that is applicable to a prescribed geographic area for a project. "If the area meets the requirement, the provisions in this instance can allow for increased density and parking," Wolff said. He noted that the overlay zoning can have a sunset period or a trigger-ending mechanism if provisions change.

The council after much discussion determined the best course of action was to move the draft forward without, using Mayor Gerringer's words, delays due to "more digging in and editing." If HCD stays on track, comments will return to the council in October, a second draft will be submitted in November for a second 90-day review, and the final Housing Element will be adopted for certification on Jan. 31, 2023. To view the Housing Element and appendixes, visit http://lafayette.granicus.com/GeneratedAgendaViewer.php?clip_id=59e5a760-6c4b-40cf-8fd8-7b8a44630c5f

Reach the reporter at: info@lamorindaweekly.com

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