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## City plans response to HCD regarding Housing Element questions

By Lou Fancher

Lafayette housing consultant Diana Elrod on April 10 presented the city council with an informational update to the Department of Housing and Community Development (HCD) comment letter. The communication came in response to the city's 6th Cycle Housing Element (HE) that was submitted to the state on Jan. 31 for a statutory 60-day review. The most recent correspondence came March 29, with 28 comments from HCD that Elrod referred to as "a matrix of issues."

Seeking questions and direction from the council that will determine the content of discussions city staff will have with HCD consultants regarding their reply, Elrod said the council's input would also guide research the staff conducts as the HE process continues to move forward.

Among the recent spate of 28 comments, two elements rose to a level requiring council direction before staff moves forward to research and address the issues. The first is the number of Accessory Dwelling Units (ADU) Lafayette has projected. The state has indicated it believes the number is too high, despite the evidence presented by the city establishing a foundation for the projections. The second issue came with some surprise, when HCD for the first time stated that the city must consider a "suite of programs" to address housing mobility in low-density neighborhoods.

HCD's comment said any revised ADU projection numbers should come with additional data and an analysis of the ADUs in 2022. The-rescaled assumptions should also reflect recent annual trends. Lafayette permitted 37 ADUs in 2022 (the average since 2018 is 17 per year) and, based on an uptick of interest in ADUs, Lafayette in the HE draft had projected an average of 35 units per year throughout the 6th cycle planning period. Even so, HCD recommended setting the number at closer to 20-25 units.

The second HCD comment referred to the city's "concentrated area of affluence" and proportion of households with high median income; both of which present mobility barriers to accessible housing choices and affordability. HCD stated for the first time that Lafayette's HE should include "a significant and robust suite of actions (not limited to the RHNA) to promote housing mobility and increasing housing choices and affordability throughout the city but especially in lower-density neighborhoods." Elrod said the comment means that even if they meet RHNA requirements, HCD is requiring jurisdictions - not just in Lafayette but in other areas with similar demographics - to provide more housing opportunities in single-family home neighborhoods.

HCD suggested the HE should include more "missing middle" type housing with unit footprints scaled to the size of single family homes, but coming with densities around 20-25 units per acre. Examples are of such housing are duplexes, townhouses, and fourplexes. Staff is researching this option while exploring how other jurisdictions plan to respond to similar or same comments received from HCD. They are also collecting HE's in areas that have been certified, such as Orinda, to discover and learn what those cities did to receive approval from HCD.

In both matters, staff sought comments and direction from the council and plan to return at a future meeting with a "bevy of options" for more concrete decisions about responding to HCD. Elrod said staff wanted to make sure the response they eventually present to HCD is one in which everyone is confident will be accepted. "We don't want to go around and around again without them saying, 'Yes, this is what we want.'"

Council briefly discussed if a letter from the city attorney in defense of the final HE draft they present would protect the city from future legal action that might be taken; not by HCD, but by other interest groups objecting to specific new development projects. Elrod said it will be discussed by staff, but predicted "it is not really worthwhile because the HCD is what it is" and a letter might even stall the certification process. Discussion about the impact of using SB9 as a tool to address HCD's "missing middle" comments showed it would not be helpful, but other opportunities to develop housing strategically are possible. Examples include multi-unit projects on corner lots, sections of streets instead of entire streets zoned for multi-family units (sometimes known as spot zoning), or modeling after other cities with overlay districts for developments designated for faith-based housing or other specific categories. Staff will bring their findings for realistic options after more research is conducted.

Public comments primarily focused on specific findings in HCD's response, new and existing ADUs and how best to track their number and usage, cooperation with neighboring cities to solve housing cost and availability problems, and a list of policy ideas to support the city's efforts from board members of Inclusive Lafayette. (An addendum to the online staff report includes a letter from Inclusive Lafayette.)

In a separate letter from HCD dated March 16, Elrod said it was stated that only HCD has the authority to deem whether or not a city's HE is in substantial compliance, despite case law and state codes to the contrary. She said an attachment to the draft HE submitted by the city stated at length how Lafayette was in compliance, but HCD had declined accepting those statements. Although she said there are no specific deadlines for completion of revisions to the draft HE, Elrod confirmed that Lafayette plans to complete the required rezoning by Jan. 31, 2024, regardless.

Council closed the discussion by asking if time could be saved by making policy changes rather doing further analysis. Elrod said the city may certainly need to add or change policies, but HCD has asked explicitly to provide more analysis and the request must not be declined. If additional staff or staff hours must be added to complete the research and revision work ahead, staff will bring the matter to council for approval.

Reach the reporter at: [info@lamorindaweekly.com](mailto:info@lamorindaweekly.com)

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