



MEMORANDUM

DATE: February 10, 2022
TO: Planning Commission
FROM: Planning Staff
SUBJECT: **Workshop - 2023-2031 Housing Element Update: “Balance Brisbane” Update, Housing Needs and Rules to Meet the RHNA, and Constraints to Housing**

Tonight’s workshop is the third in a series leading up to the preparation of the draft update to the Housing Element, which will be presented to the Planning Commission in the Spring of this year. Link to the December 16th and January 27th workshop materials are provided as attachments, for reference. Tonight’s workshop will focus on:

1. “Balance Brisbane” Update
2. Housing Needs Assessment and Rules to Meet the Regional Housing Needs Allocation (RHNA)
3. Housing Constraints

Another workshop is scheduled for the Planning Commission’s February 24th meeting to discuss potential sites for rezoning to meet the RHNA and discuss Goals, Policies and Programs. These topics may carry into March workshops.

1. “Balance Brisbane” Second Update

As of the date of this writing, Balance Brisbane has been visited over 380 times and a total of 52 people have submitted their suggested housing sites, an increase of 52% from two weeks ago. Since the Balance Brisbane deadline has been extended to February 6th to gather more community input, and the closing date is after this written report, staff will provide a verbal report and documentation of the final results prior to the Commission’s discussion of sites selection on February 24th.

2. Housing Needs and Rules to Meet the RHNA

In prior workshops we’ve discussed Brisbane’s household demographics, housing needs, and housing trends (December 16th and January 27th workshop memos attached for reference). On January 27th, we also discussed the shortfall in meeting the Regional Housing Needs Allocation (RHNA), especially in the lower income categories. Brisbane’s RHNA is significantly larger in this housing element cycle versus the previous cycle, and the State has added stricter criteria to claim proposed sites and densities are viable to meet the RHNA. This workshop is aimed at summarizing the key criteria for designating sites to frame the Commission’s discussion of specific sites and densities in the next workshop.

This section is organized around three main questions regarding housing sites selection:

- A. What are the state’s requirements to meet the RHNA?
- B. How do the state’s RHNA rules relate to Brisbane’s Inclusionary Housing Ordinance?
- C. What if the actual development doesn’t match with the projections?

A. What are the state’s requirements to meet the RHNA?

This section will describe the City’s RHNA, housing site criteria generally, and the specific criteria for designating sites for specific income categories. The City must apply the lens of affirmatively furthering fair housing to site selection, including not concentrating lower income housing to lower resource areas.

RHNA – By The Numbers

The RHNA is the State-mandated minimum number of housing units by income category that jurisdictions must zone for in the Housing Element period, . Because Housing Element law requires “no net loss” if sites develop at different unit counts and/or affordability levels than what was projected in the Housing Element, a buffer of 15 to 30% beyond the RHNA is recommended by the California Department of Housing and Community Development (HCD). The Balance Brisbane simulation tool included a 20% buffer for this purpose.

**City of Brisbane RHNA 2022-2031
 Housing Units by Income Categories**

	Very Low	Low	Moderate	Above Moderate (Market Rate)	Totals
Years 2023-2031 RHNA 6th Cycle	317	183	303	785	1,588
RHNA +20%	380	220	364	942	1,906

** 15-30% buffer recommended by HCD.

The income levels are updated annually by the State on a County-wide basis and the latest iteration was provided in the January 27th agenda report. As an example, in 2021 a four person household would need an annual income of over \$179,500 to afford a market-rate housing unit, and the same size household whose annual income is \$91,350 or less would be in the very low income category.

Housing Site Characteristics:

Sites claimed in the Housing Element must be:

- a. Vacant sites zoned for residential use; or
- b. Vacant sites zoned for nonresidential use that allow residential development; or
- c. Residentially zoned sites that are capable of being developed at a higher density, including sites owned or leased by a city; or
- d. Sites zoned for nonresidential use that can be redeveloped for residential use and for which a program is included to rezone the site to permit residential use, including sites owned or leased by a city.

When there are inadequate sites to accommodate the RHNA under existing zoning, the City must identify sites that will be rezoned by January 31, 2024, and those rezoned sites must be realistically

expected to develop for housing within the planning period.

Zoning Appropriate to Moderate-Income and Above-Moderate (Market Rate) RHNA

Housing Element law allows cities to project the number of units a site will realistically develop for moderate and above-moderate income housing in two different ways:

- Minimum Density Method: If a site is zoned to require minimum densities, the City can claim the number of units developed at that minimum density. The only zoning district in Brisbane to impose minimum densities are the **Parkside overlay districts**. The pending **Baylands Specific Plan** will could also establish minimum densities when adopted, consistent with Measure JJ.
- Analysis Method: If site zoning does not establish minimum density requirements, the number of units calculated must be adjusted based on the land use controls (development standards like height, setbacks, etc.) site improvement requirements (e.g., roadway or site circulation), and typical densities of existing or approved residential developments at a similar affordability level. **This method will apply to all other sites in Central Brisbane other than the Parkside and Baylands sites.**

Pending development sites that have received planning entitlements may be credited toward meeting the RHNA based on the specific development unit and affordability count, if they can be demonstrated to be expected to be built within the planning period. Any surplus in the zoning for low- and very-low income housing could be applied to the moderate and above-moderate RHNA.

Projected accessory dwelling units (ADU) (including junior ADUs) may also be credited to moderate or above moderate-income categories based on an analysis of past trends, ongoing demand and incentives available. While the projected ADU production will increase over the 2015-2022 Housing Element based on zoning text amendments easing ADU development restrictions, the number will still be a small percentage of the RHNA.

Zoning Appropriate to Low- and Very Low-Income RHNA

There are two methods to claim credit for units in the low- and very low-income categories:

- Default Density Method: Site zoning allows for residential development at a "default density" of 20 dwelling units per acre (du/ac), a density that is assumed by the State to be sufficient to accommodate the development of affordable housing.
- Analysis Method: Site zoning allows for residential development below the "default density" but a capacity analysis demonstrates the zoned densities of the site will accommodate the lower income RHNA. This method analyzes 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. The site capacity analysis would include the projected number of lower income units that could realistically be developed on the site.

Currently zoned sites that meet the following criteria may be used to claim 100% of the projected units developed on the site through either of the methods used above towards meeting the lower income

categories of the RHNA:

- Site area of 0.5 to 10 acres. To claim sites outside this range, the City must demonstrate that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower income housing units as projected for the site, or other evidence. Without prior examples of successful developments, this is a challenging case to make.
- No more than 50 percent lower income RHNA units met on nonvacant sites. If that isn't possible, and the City relies on more than half of its lower income RHNA on nonvacant sites (like the Parkside Plan sites), the City must make findings based on substantial evidence that the existing uses will likely be discontinued during the planning period.

Pending developments that include lower income units may be credited, and a portion of projected ADU development may also be credited based on production and affordability trends.

Adequate Sites Program for Future Zoning: The City does not have adequate sites under current zoning to accommodate its lower income RHNA (500 units; additional 100 buffer units).

Accordingly, Housing Element law requires the City to identify sites to be rezoned to meet the lower income RHNA shortfall, subject to the following requirements:

1. By-right (no use permit) zoning must be completed by January 31, 2024.
2. Permit a minimum of 20 du/ac.
3. Permit the development of at least 16 units per site.
4. Require 20% or more of the units to be affordable to lower income households.
5. At least 50% of the shortfall of low- and very low-income RHNA must be accommodated on sites designated for exclusively residential uses.
6. Sites must be able to be developed for housing within the planning period (by 2031).

We will review the potential rezoning sites to accommodate the lower income RHNA shortfall at the February 24th workshop.

Consequences for Failing to Meet 1/31/2024 Rezoning Deadline: If the City doesn't adopt all rezoning's by the 1/31/2024 deadline, a developer could still propose a housing development project on a site developed for rezoning. The City would then be barred by State law from denying such a project, or requiring a conditional use permit or other discretionary permit, or imposing a condition that would render the project infeasible so long as the proposed project complies with applicable objective general plan and zoning standards and criteria, including design review standards, described in the Housing Element rezoning program. (The City could deny the project if it would have a specific, adverse impact upon the public health or safety and there is no feasible method to satisfactorily mitigate or avoid the adverse impact.) The City could also be subject to enforcement actions by HCD, including a determination that the Housing Element no longer complies with the requirements of State law and referral to the Attorney General.

B. How do the RHNA rules relate to Brisbane's Inclusionary Housing Ordinance?

The State requires that the zoning regulations applicable to rezoned sites to meet the lower income RHNA shortfall require a minimum of 20% of units developed on the site to be deed-restricted as affordable to those income categories. The City's existing IHO would not meet this requirement as currently drafted; nor would the draft IHO amendments recommended by the Planning Commission in 2019 (Zoning Text Amendment RZ-5-18).

The City's inclusionary housing ordinance ("IHO"; BMC Chapter 17.31) was adopted in 2009 and applies to residential and mixed-use developments of six (6) or more dwelling units. The IHO requires anywhere between 10-20% of the total units to be deed-restricted as affordable for purchase or rent to moderate and/or low-income households depending on the number of units proposed. There is a significant difference between the lower income RHNA credit the State allows jurisdictions to take for existing zoning that meets the default density (100% of the zoned minimum density) and how much affordable housing the IHO would require on a given site. The City will be able to accommodate a significant portion of its lower income RHNA of 600 dwelling units (including a 20% buffer) with the Parkside Overlay zoned-sites, which yields 240 dwelling units using the minimum density of 20 du/ac. Because the Parkside sites will not need to be rezoned, they are not subject to the 20% affordable housing limitation required for rezoned sites explained above.

The Planning Commission reviewed draft amendments to the IHO in 2019 that would lower the applicability threshold to projects of five or more dwelling units and replace the sliding scale requirement with a flat percentage requirement of 15% to both rental and for-sale developments. The City Council has not yet reviewed the draft IHO amendments due to ongoing planning work for the Baylands Specific Plan, which would use the City's IHO as a basis for negotiating Baylands-specific affordable housing development. As part of that effort, our Affordable Housing Strategic Plan consultants ECONorthwest are finalizing a comprehensive market-based evaluation of the draft IHO to ensure it is calibrated to current market conditions and consistent with the City's larger affordable housing goals.

The City will need to identify sites to rezone to address the remaining 360 dwelling unit gap and provide an adequate buffer (see discussion in section C below). The Baylands site is the largest site that could be rezoned and, as previously indicated, the Specific Plan/rezoning is already in process, consistent with Measure JJ in 2018 and the subsequent General Plan amendment. Assuming the City is committed to completing that rezoning by January 2024, it, in combination with the existing Parkside zoning, could accommodate the City's RHNA at all income categories. Using the 20% minimum affordability level, as required by the State for planned rezoning sites, the Baylands site would generate 360 dwelling units affordable to lower income households. This conservatively assumes the site develops at the low end of the allowable development capacity range of 1,800-2,200 units allowed per the General Plan. Note that the developer has submitted preliminary Specific Plan materials to the City for 2,200 dwelling units.

For an additional buffer, the City could also consider adopting 20% affordable housing overlays for any of the other sites that may be identified to be rezoned, rather than revising the IHO to impose a 20% requirement Citywide. If the City were to amend the IHO to impose a 20% minimum requirement

Citywide, the City would have to hire a consultant to prepare an economic analysis showing that a 20% requirement could be borne by the market and wouldn't stifle housing development.

C. What if the actual development doesn't match with the projections?

As we've seen with past housing element cycles, even with zoning in place, market forces determine actual development on the ground. As mentioned above, there is an inherent disconnect between the RHNA credit we can claim for already zoned sites that meet the default density (Parkside sites) vs. sites identified for rezoning (20% of site yield). Already zoned sites, however, will likely not develop as 100% affordable developments without accompanying affordable housing overlay requirements.

If a market-rate development is proposed for an already zoned site, the City's inclusionary ordinance would apply and, in the current draft IHO, only 15% of the units built would be deed-restricted. Additionally, depending on whether the site is developed as for-sale or rental housing, the target household income levels would vary (e.g., the draft IHO requires for-sale projects to include units affordable to moderate- or low-income households, whereas rental project inclusionary units must be affordable to very low-income households).

If no buffer is provided, and sites are proposed to develop at lower levels than projected in the Housing Element, the City would have to make certain findings in approving such developments, including identifying new sites to accommodate the "lost" units on other sites. This is both logistically challenging and would invite scrutiny for Housing Element compliance or risk decertification of the Housing Element if not completed within the mandated timeframes in State law. It is prudent to ensure that the Housing Element incorporates the buffer rather than deferring the action to the time a development proposal is submitted.

3. Housing Constraints

Government Code Section 65583(a)(6) requires cities to, "*Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities...*" This section provides an introduction on this topic and additional materials will be provided in the late February to March workshops, to be related together with the detailed review of policies and programs. Also, as we discuss sites selection, we will highlight constraints that certain sites may or may not have versus the other sites.

While state and local regulations play an important role in protecting the public's health, safety and welfare, they can also act as constraints that affect both the amount of residential development that occurs but also affordability. Governmental constraints such as use permits for residential development and subjective design standards are examples of existing constraints that the City is in the process of addressing, through the update of the design standards for multifamily development and zoning for the NCRO-2 and SCRO-1 districts.

Nongovernmental constraints are primarily market-driven and generally outside direct government control, but cities can influence and offset the negative impact of nongovernmental constraints through responsive programs and policies. Analyzing specific housing cost components — including the cost of land, construction costs, and the availability of financing — assists in developing and implementing housing and land-use programs that respond to existing local or regional conditions.

While the cost of new housing is largely influenced by factors beyond the City’s control, we can create essential preconditions (favorable zoning and development standards, etc.) that encourage and facilitate development of a variety of housing types and levels of affordability.

Examples of governmental and nongovernmental constraints that may be mitigated or eliminated through Housing Element policies and programs include:

Examples of Types of Housing Constraints

Governmental Constraints	Non-Governmental Constraints
Land Use/Zoning (where is housing allowed? How dense? How tall?)	Land Prices (scarcity)
Development Fees (permit fees, impact fees, in-lieu fees, etc.)	Construction Costs
Code Compliance (Health and safety, sustainability/green building, etc.)	Financing
On/Off-site Improvements, Utilities (water), Infrastructure (roads)	Topography
Permit Processing (how long is the permit process generally? How complex? How much certainty/uncertainty?)	
Constraints for Housing for Disabled Households	

4. Schedule and Next Steps:

The next workshop is scheduled for the Planning Commission’s regular meetings in February. The topics tentatively planned as follows:

- February 24th: 1) Housing Sites Inventory Discussion and 2) Draft Policies and Program related to Housing Sites
- March 10th: Draft Policies and Programs and Remaining Topics TBD

Attachments:

- A. Workshop Agenda Report, [December 16, 2021](#)
- B. Workshop Agenda Report, [January 27, 2022](#)
 Assembly Bill 1398:
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1398