

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

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November 8, 2022

Jordan Klein, Director  
Planning and Development Department  
City of Berkeley  
1947 Center Street, 3<sup>rd</sup> Floor  
Berkeley, CA 94704

Dear Jordan Klein:

**RE: The City of Berkeley's 6<sup>th</sup> Cycle (2023-2031) Draft Housing Element**

Thank you for submitting the City of Berkeley's (City) draft housing element received for review on August 10, 2022, along with revisions received on November 1, 2022. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a conversation on September 20, 2022 and a sites inventory tour on October 6, 2022, with the City's housing element team. In addition, HCD considered comments from Councilmember Rashi Kesarwani, Councilmember Lori Droste, East Bay for Everyone, TransForm, YIMBY Law and Greenbelt Alliance, David Kellogg, Bee Coleman, Latrel Powell, Katia Kiston, Sheila Goldmacher, Ariana Thompson-Lastad, Elizabeth Ferguson, Gail Brown, Alan Kiviat, Ginny Madsen, Leah Simon-Weisberg, Ms. Omowale Fowles, Amelia Post, S M Ostroff, Rahel Smith, Elana Auerbach, Negeene Mosaed, Yes2TOPA Coalition, pursuant to Government Code section 65585, subdivision (c).

The draft element addresses many statutory requirements; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code), as follows:

1. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

*Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory... (Gov. Code, § 65583, subd. (c)(1).)*

Suitability of Nonvacant Sites: The element lists various factors (e.g., age of structure, improvement to land value ratio, existing floor area) utilized to indicate the potential for redevelopment in the planning period (p. C-15); however, it should support the validity of these factors. To support these factors, the element should evaluate development trends or recent experience in redevelopment relative to the factors. For example, the element could utilize Table C-6 (Pipeline Sites) and list the values of the factors for prior uses.

In addition, specific analysis and actions are necessary if the housing element relies upon nonvacant sites to accommodate more than 50 percent of the Regional Housing Needs Allocation (RHNA) for lower-income households. For your information, the housing element must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue in the planning period. Absent findings (e.g., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

Accessory Dwelling Units (ADU): HCD's October 17, 2022 Review of the City's ADU Ordinance yielded information about potential ADU limitations in the City, including the number of units allowed per lot in the Hillside Overlay District. However, the City's housing element ADU projections do not account for these potential limitations. Therefore, the housing element should lower the ADU projections, or add and/or modify programs to maintain current ADU projections.

Environmental Constraints: While the element provides information on general environmental constraints, it should also relate those constraints to identified sites, including a discussion of any other known conditions (e.g., shape, easements, contamination) and impacts on development in the planning period.

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the City must submit an electronic sites inventory with its adopted housing element. The City must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml#element> for a copy of the form and instructions. The City can reach out to HCD at [sitesinventory@hcd.ca.gov](mailto:sitesinventory@hcd.ca.gov) for technical assistance.

Zoning for a Variety of Housing Types (Emergency Shelters): While the element provides general information on development standards for emergency shelters, it should also describe available acreage, capacity, and proximity to transportation and services. For example, the element could describe specific

sites where emergency shelters are feasible and provide information on their location relative to services.

Programs: As noted above, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types.

In addition, the element identifies a total of 1,200 units on two BART sites, including 420 units to meet the lower-income RHNA. The element should amend Program 28 (BART Station Area Planning) with additional milestones and a full schedule of actions throughout the planning period to ensure the site is made available during the planning period. In addition, the program should add provisions that describe when additional actions are triggered (e.g., progress not made three years into the planning period).

2. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures... (Gov. Code, § 65583, subd. (a)(5).)*

*An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including... requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2... (Gov. Code, § 65583, subd. (a)(6).)*

*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. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

Land Use Controls: While the element identifies relevant land-use controls (Appendix B), the element must also evaluate those development standards for impacts on housing supply (number of units), cost, feasibility, and the ability to achieve maximum densities. The element currently relies on recently entitled projects, likely projects, and pipeline projects to indicate land use controls are not

a constraint but should also clarify whether projects benefitted from other laws, such as State Density Bonus Law, to achieve project densities or evaluate impacts on cost and feasibility. For example, the element could describe a sample project and determine the feasibility of a project being built at maximum density for each zone with sites currently in the inventory.

Local Processing and Permit Procedures: The element provides an overview of the permit processing procedures but should analyze this process as a constraint. For instance, the element discusses use permits and administrative use permits as potential constraints to projects, including multiple public hearings that can significantly hinder project approval, but does not take meaningful actions to mitigate these factors. The element should describe the factors behind projects facing multiple public hearings, analyze these factors as constraints, and incorporate policies and/or programs to mitigate the constraint, as appropriate.

In addition, the element should fully list and analyze findings of approval for use permits, administrative use permits, and design review as constraints. Moreover, the element should analyze the use permit requirement, instead of a by-right ministerial approval process, for multiple residential uses as a potential constraint. The analysis should describe the requirement for the use permit instead of the previously provided information on the concurrent processing of multiple-use permits. To mitigate these constraints, the element should add and/or modify programs, as appropriate.

Permit Streamlining Act: The element should clarify the process for complying with the Permit Streamlining Act (Government Code section 65950, subdivision (a) (5)) and Public Resource Code sections 21080.1 and 21080.2. In particular, the element should clarify whether decision-making occurs at the Zoning Administration Board or at the staff level. These provisions are critical to meeting the Permit Streamlining Act requirement and generally facilitate the processing of housing developments.

Constraints on Housing for Persons with Disabilities: While the element concludes the definition of family or household is not restrictive and not a constraint on housing for persons with disabilities, it must provide analysis to demonstrate this conclusion or add or modify programs to address identified constraints. For example, the definition appears to require a single lease or rental agreement and shared living experiences which could act as a constraint on housing for persons with disabilities.

Requests for Lesser Densities: While the element (p. 93) states projects are built at a higher density within the City, the element must analyze requests to build at densities below those anticipated in the sites inventory, including hindrance on the construction of a locality's share of the regional housing need.

Programs: As noted above, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

3. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element. (Gov. Code, § 65583, subd. (c).)*

Programs must demonstrate that they will have a beneficial impact within the planning period. Beneficial impact means a specific commitment to deliverables, measurable metrics or objectives, definitive deadlines, dates, or benchmarks for implementation. Deliverables should occur early in the planning period to ensure actual housing outcomes. Several programs and actions have timelines that could be moved earlier in the planning period to ensure a beneficial impact. Examples include Programs 4 (Housing Trust Fund), 12 (Workforce Housing), 17 (Accessible Housing), 28 (BART Station Area Planning), 30 (Accessory Dwelling Units), 33 (Zoning Code Amendment: Residential) and 34 (Permit Processing).

4. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics... (Gov. Code, § 65583, subd. (c)(5).)*

The element (pp. 140-146) includes various affirmatively furthering fair housing (AFFH) actions and provides “Citywide” targeting for most programs. While programs may benefit a multitude of neighborhoods, the element should evaluate key programs relative to specific neighborhoods for purposes of AFFH, including promoting housing mobility and new housing choices and affordability in higher resource or higher income areas. For example, several key programs to add housing opportunities in higher resource or income areas could benefit from geographic targeting. In addition, the element should include a mid-term evaluation of progress and effectiveness of AFFH action and commit to make adjustments as appropriate within a specified time (e.g., six months) to better achieve AFFH goals.

The element will meet the statutory requirements of State Housing Element Law once it has been revised and adopted to comply with the above requirements.

Public participation in the development, adoption, and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City will meet housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

HCD appreciates the responsiveness, dedication, and collaboration the City's housing element team provided during the review. We are committed to assisting the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Jose Ayala, of our staff, at [Jose.Ayala@hcd.ca.gov](mailto:Jose.Ayala@hcd.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall", with a stylized flourish at the end.

Paul McDougall  
Senior Program Manager