

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

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August 12, 2022

Drummond Buckley, Director
Planning Department
City of Orinda
22 Orinda Way, 1st Floor
Orinda, CA 94563

Dear Drummond Buckley:

RE: City of Orinda's 6th Cycle (2023-2031) Draft Housing Element

Thank you for submitting the City of Orinda's (City) draft housing element received for review on May 16, 2022 along with revisions received on August 2, 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 July 26, 2022 with Winnie Mui of your staff and consultants Lucy Rollins and Jennifer Gastelum. In addition, HCD considered comments from YIMBY Law and Greenbelt Alliance 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). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), then any rezoning to accommodate the regional housing needs allocation (RHNA), including for lower-income households, shall be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i). Please be aware, if the City fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until rezones to accommodate a shortfall of sites pursuant to Government Code section 65583, subdivision (c), paragraph (1), subparagraph (A) and Government Code section 65583.2, subdivision (c) are completed.

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 meets 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>.

We are committed to assist the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Jamillah Williams, of our staff, at Jamillah.Williams@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF ORINDA

The following changes are necessary to bring the City's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at <http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <http://www.hcd.ca.gov/community-development/building-blocks/index.shtml> and includes the Government Code addressing State Housing Element Law and other resources.

A. Housing Needs, Resources, and Constraints

1. *Affirmatively further[ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction (Gov. Code, § 65583, subd. (c)(10)(A))*

Disproportionate Housing Needs including Displacement: While the element does include data on overcrowded households, substandard housing conditions, and cost burdened households, it must also include an analysis including demographic data for persons experiencing homelessness. The element should analyze the data including looking at trends, patterns, and other local knowledge, and conclude with a summary of issues.

Site Inventory and Affirmatively Furthering Fair Housing (AFFH): The element must include an analysis demonstrating whether sites identified to meet the regional housing need allocation (RHNA) are distributed throughout the community in an AFFH manner. Currently all lower-income sites and higher density multifamily opportunities are concentrated in the Downtown Precise Plan. The element should discuss the impact of concentrating all the lower income units in one area. The element should also discuss whether the distribution of sites improves or exacerbates conditions. If sites exacerbate conditions, the element should identify further program mitigation actions that will be taken (e.g., housing mobility and new opportunities in other higher opportunity areas).

Contributing Factors: While the element lists contributing factors that create, contribute to, perpetuate, or increase the severity of fair housing issues and are fundamental to adequate goals and actions, the identified factors must be prioritized.

2. *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).)*

Progress in Meeting the Regional Housing Need Allocation (RHNA): The element indicates (p. 128) that 8 units affordable to very low-income households, 30 units affordable to low-income households, and 13 units affordable to moderate income households have been built or are under construction or approved but provides no information demonstrating affordability of the units. As you know, the City's RHNA may be reduced by the number of new units built since June 30, 2022; however, the element must describe the City's methodology for assigning these units to the various income groups based on actual sales price, rent level or other mechanisms ensuring affordability (e.g., deed-restrictions) and demonstrate their availability in the planning period.

Realistic Capacity: While the element provides assumptions of buildout for sites included in the inventory, it must also provide support for these assumptions. For example, the element should demonstrate what specific trends, factors, and other evidence, especially for development with units affordable to lower-income households, to support mixed-use development in the Downtown Precise Plan area where the majority of sites are identified to accommodate the lower-income RHNA. The estimate of the number of units for each site must be adjusted as necessary, based on the land use controls and site improvements, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction, and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities. The element also needs to analyze the likelihood that the identified units will be developed as noted in the inventory in zones that allow nonresidential uses (e.g., mixed-use). This analysis should consider the likelihood of nonresidential development, performance standards, and development trends supporting residential development.

Suitability of Nonvacant Sites: While the element identifies nonvacant sites to accommodate the regional housing need for lower-income households in the Downtown Precise Plan, it provides little description of the potential for redevelopment. Additionally, while the element states the City has been in contact with property owners, it does not specify if the owners are interested in redevelopment. The element must describe the methodology used to determine the additional development potential within the planning period. The methodology must consider factors including the extent to which existing uses may impede additional residential development, development trends, market conditions, any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, and regulatory or other incentives or standards to encourage additional residential development on these sites. (Gov. Code, § 65583.2, subd. (g).) For sites with residential uses, the inventory could also describe structural conditions or other circumstances and trends demonstrating the redevelopment potential to more intense residential uses. For nonresidential sites, the inventory could also describe whether the use is operating, marginal or discontinued, and the condition of the structure or could describe any expressed interest in redevelopment. For additional information and sample analysis, see the Building Blocks at: <http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml#analysis>.

In addition, for the identified church sites, the element briefly describes the Vista Verde project. The element should describe any history of developing housing on church sites in

addition to this project. To strengthen this analysis, the element should tie Vista Verde's development experience to the characteristics of the 2-3 proposed sites, noting similarities in conditions and describing those churches' degree of interest in residential development.

If the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households, the housing element must demonstrate that the existing use is not an impediment to additional residential development in the planning period. (Gov. Code, § 65583.2, subd. (g)(2).) 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.

Caltrans Sites: As noted in the element, sites currently owned by Caltrans are not currently listed as surplus or excess property. In addition, while the element includes Action 1.B to work with Caltrans to decertify the site, it is unclear whether the site will be declared excess or surplus and be available for housing within the planning period. Absent further evidence that Caltrans will dispose of this site within the planning period, this site should not be utilized to accommodate the RHNA.

Zoning for a Variety of Housing Types:

- *Emergency Shelters:* The element must demonstrate permit processing, development, and management standards are objective and encourage and facilitate the development of, or conversion to, emergency shelters. In particular, the element must analyze the occupancy limit of seven clients per night. In addition, emergency shelter spacing requirements appear to require siting beyond the development standards allowed under housing element law. Emergency shelters must only be subject to the same development and management standards that apply to residential or commercial development within the same zone except for those standards prescribed by statute. The element must also clarify the existing uses of the four sites identified for potential shelter sites and whether they have the potential capacity for adaptive reuse.
 - *Accessory Dwelling Units (ADU):* The element indicates the City modified its zoning code to ease barriers to the development of ADU's. However, after a cursory review of the City's ordinance, HCD discovered several areas which were not consistent with State ADU law. HCD will provide a complete listing of ADU noncompliance issues under a separate cover. As a result, the element should add a program to update the City's ADU ordinance in order to comply with state law. For more information, please consult HCD's ADU Guidebook, published in December 2020, which provides detailed information on new state requirements surrounding ADU development.
3. *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).)

Land Use Controls: The analysis must evaluate the cumulative impacts of land use controls on the cost and supply of housing, including the ability to achieve maximum densities and cost and supply of housing. The analysis should also describe past or current efforts to remove identified governmental constraints and include programs to address or remove any identified constraints. The element should analyze the minimum lot width and depth in the Residential Medium Density (RM) zone and the Senior Housing (SH) overlay as well as the height limit of 27 feet in most zoning districts as constraints and add or revise programs as needed. Further, the element states that ten dwelling units per acre may be a barrier to mixed-use development in the Downtown Zone but did not include a plan or program to address this potential constraint.

In addition, the element must clarify how the High-Density Overlay Zone interacts with the General Plan maximum density of ten dwelling units per acre. Pursuant to conversations with City staff, their appears that the City will initiate a general plan amendment along with the rezone to match densities proposed in the new overlay zones. The element should include this information either in the analysis or part of Program X and describe and analyze all zoning standards for the overlay

Growth Management Requirements: The element states “The Growth Management section meets the Contra Costa County mandate established by voter-approved Measures C and J,” but provides no explanation of the mandate or Measures C and J. The element must identify and analyze these regulations as potential constraints on a variety of housing types (e.g., multifamily rental housing, mobile homes, transitional housing).

Planned Development: The element indicates that multifamily development may occur through Planned Development (PD) but should clarify if this process is optional. If it is not, the element must describe and analyze the permit processing procedures impacts as potential constraints on housing supply and affordability, particularly for residential development affordable to lower-income households. The analysis must describe approval procedures and decision-making criteria, and whether they are discretionary approvals.

Local Processing Procedures: While the element describes the approval process for residential development, it must clarify if the process applies to both single family and multifamily developments. For additional information and sample analysis, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/constraints/processing-permitting-procedures.shtml>.

Fees and Exactions: The element must describe all required fees for single family and multifamily housing development, including impact fees, and analyze their impact as potential constraints on housing supply and affordability. The element should also describe annexation, development agreement, and environmental fees as well as provide estimates for typical total costs in relation to the listed hourly staff charges. In addition, while the element lists the proportion of fees for multifamily and single-family developments, the fees for multifamily development are much higher and should be analyzed as a constraint.

Constraints on Housing for Persons with Disabilities: The element describes the process for a reasonable accommodation where the accommodation seems to be only for a limited term. The element must clarify whether the reasonable accommodation expires and if so, whether that complies with state law and federal fair housing guidance.

4. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, the cost of construction... (Gov. Code, §65583, sub (a)(6).)*

Land Costs: While the element identifies land costs from 2014. The element must update land costs to reflect current conditions.

Construction Costs: While the element provides typical construction costs for single family homes, it should also include the typical cost for multifamily construction.

B. Housing Programs

1. *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).)*

To address the program requirements of Government Code section 65583, subd. (c)(1-6), and to facilitate implementation, programs should include: (1) a description of the City's specific role in implementation; (2) definitive implementation timelines; (3) objectives, quantified where appropriate; and (4) identification of responsible agencies and officials. Programs to be revised include the following:

- *Action 3.B (Extremely Low-Income Housing)* should describe which regulatory incentives will be expanded and include a timeline for implementation.
 - *Action 3.E (Objective Design Standards)* should revise the implementation timeframe to reflect the expenditure deadline of the funding source (SB 2).
 - *Action 4.B (Development Review and Processing Procedures)* should include implementing actions associated with the review.
 - *Action 4.E (Revised Parking Standards)* currently states that "possible approval" would occur in 2025. The action should commit to specific parking revisions by a specific date.
2. *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*

completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (Gov. Code, § 65583, subd. (c)(1).)

As noted in Finding A2, 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 should be revised as follows:

Sites Identified in Prior Planning Periods: The element must include a program for vacant sites identified in two of more consecutive planning periods' housing elements or nonvacant sites identified in a prior housing element, that are currently identified to accommodate housing for lower-income households. The program must be implemented within the first year or three years of the planning period, whichever is applicable, and commit to zoning that will meet the density requirements for housing for lower-income households and allow by-right approval for housing developments that include 20 percent or more of its units affordable to lower-income households. (Gov. Code, § 65583.2, subd. (c).)

Nonvacant Sites Reliance to Accommodate RHNA: As the element relies upon nonvacant sites to accommodate the regional housing need for lower-income households, it should include a program(s) to promote residential development of those sites. The program could commit to provide financial assistance, regulatory concessions, or incentives to encourage and facilitate new, or more intense, residential development on the sites. Examples of incentives include identifying and targeting specific financial resources and reducing appropriate development standards. For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/program-requirements/identify-adequate-sites.shtml>.

Program 4.A (Amend Development Standards to Remove Constraints): While the program includes a specific commit to allow supportive housing as a permitted use without discretionary review in zones where multifamily and mixed-use developments are permitted, including nonresidential zones permitting multifamily uses, it should reference the correct Statutory Citation for AB 2162 (Gov. Code, § 65650).

3. *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).)*

As noted in Findings A3 and A4, 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.

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).)*

As noted in Finding A1, the element requires a complete AFFH analysis. Depending upon the results of that analysis, the City may need to revise or add programs to sufficiently respond to contributing factors to fair housing issues. In addition, Action 5.A (Affirmatively Furthering Fair Housing) must include specific metrics to demonstrate how actions will result in quantifiable outcomes.

C. Public Participation

Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the Housing Element, and the element shall describe this effort. (Gov. Code, § 65583, subd.(c)(9).)

While the element includes a general summary of the public participation process (pp. 6-10), it must also demonstrate diligent efforts were made to involve all economic segments of the community in the development of the housing element. The element could describe the efforts to circulate the housing element among low- and moderate-income households and organizations that represent them and to involve such groups and persons in the element throughout the process. In addition, the element should also summarize the public comments and describe how they were considered and incorporated into the element.