



Office of the City Manager

WORKSESSION  
September 21, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jordan Klein, Director, Planning and Development Department  
 Subject: Housing Element Update

SUMMARY

Berkeley is engaged in an 18-month process to update the Housing Element of the General Plan. This update occurs every eight years and is mandated by State law. The 6<sup>th</sup> Cycle Housing Element Update must be adopted by the City Council, and the statutory deadline for submitting to California's Department of Housing and Community Development (HCD) is January 31, 2023. Berkeley hired a consultant team led by Raimi & Associates to provide the necessary technical expertise and wide-reaching public outreach efforts to ensure that the City delivers a State-compliant Housing Element that reflects Berkeley's diverse character and needs. This report follows the April 28, 2021 memo on the Housing Element (see Link 1), providing more detailed information on the State's Housing Element requirements as well as specifics on the City's approach.

CURRENT SITATUTION AND ITS EFFECTS

The Housing Element Update is a Strategic Plan Priority Project, advancing the City's goal to create affordable housing and housing support services for its most vulnerable community members. The Housing Element Update will serve as the City of Berkeley's housing framework for the eight-year period between 2023-2031 (herein referred to as the "6<sup>th</sup> cycle"). Each jurisdiction in California receives a target number of homes across income levels to plan for called the Regional Housing Needs Allocation (RHNA). State law does not require that jurisdictions *build* or *finance* new housing required by the State's RHNA, but the Housing Element must *plan* to accommodate the allocated units with appropriate land use policies and development regulations.

The Housing Element Update addresses a range of housing issues such as affordability, diversity of housing types, allowable density and project locations, housing for those with special needs, and fair housing for disadvantaged communities of concern. In addition, it establishes goals, policies, and programs that will guide the City's decision-making around the development of housing to address existing and projected needs with a mix of housing opportunities that will serve a range of income levels.

Recent legislation resulted in changes and new requirements for Housing Element Updates that occur in the 6<sup>th</sup> cycle:

1. Higher Allocations. State law requires that HCD update its regional housing methodology to account for unmet existing and future housing needs. This includes an analysis of overcrowding and cost burden, in addition to projected housing needs, which raised the total regional allocation for new units. Overall, the Bay Area must plan for 441,176 new housing units during the 6<sup>th</sup> cycle, compared with 187,990 for the 5<sup>th</sup> cycle (2015-2023). Berkeley's draft 6<sup>th</sup> cycle allocation is 8,934 units, a 202% increase over its 5<sup>th</sup> cycle allocation.
2. Affirmatively Furthering Fair Housing (AFFH). Using HCD's guidance and approach, Housing Elements must now affirmatively further fair housing by examining the identified policies, programs, rules, and practices to ensure that they will promote inclusive communities and prevent poverty concentration and segregation. Berkeley will access technical assistance provided by the Association of Bay Area Governments (ABAG) to ensure its Housing Element Update complies with this new requirement.
3. Site Limitations for Lower Income RHNA. New legislation (AB 1397) sets forth additional criteria for selecting sites that can accommodate the lower income RHNA category, defined as less than 80% Area Median Income (AMI)<sup>1</sup>. Identification of opportunity sites, which is a component of the Housing Element Update, will require consideration of:
  - a. *Reusing sites from prior Housing Element cycles*. Projects with 20 percent of on-site units set aside for lower income households are subject to by-right approval without discretionary review unless rezoned for a higher density prior to the January 31, 2023 statutory deadline.
  - b. *Rezoning*. Sites to be rezoned or upzoned after January 31, 2023 to accommodate the lower income RHNA are subject to by-right approval without discretionary review if projects include 20 percent lower income units. The rezone must also include a minimum density of 20 dwelling units per acre (du/ac) and a maximum density of at least 30 du/ac and be large enough to accommodate at least 16 units on site.
  - c. *Mixed Use*. If more than 50% of the lower income RHNA is to be satisfied on mixed use or nonresidential zoning, then the sites must permit standalone residential and do not require more than 50% of the floor area ratio (FAR) for nonresidential uses.
  - d. *Small or Large Sites*. Additional analysis is required for sites smaller than 0.5 acre and larger than 10 acres for the lower income RHNA category. In

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<sup>1</sup> 2021 income levels by family size are available at <https://www.acgov.org/cda/hcd/documents/2021IncomeandRentLimits.pdf>

the 5<sup>th</sup> cycle RHNA, over 55% of the opportunity sites identified were less than 0.5 acres. To utilize small sites for lower income RHNA, the City must be able to demonstrate past trends, potential for lot consolidation, and programmatic response to facilitate lot consolidation.

- e. *More than 50 Percent Nonvacant Sites.* If more than 50% of the lower income RHNA is being accommodated on nonvacant sites, the sites are subject to a higher standard of feasibility analysis. In the 5<sup>th</sup> cycle RHNA, nearly 40% of the lower income RHNA was projected to be accommodated on nonvacant sites.
4. Site Limitation for Moderate and Above Moderate Income RHNA Categories. New legislation (AB 725, effective January 1, 2022) requires that 25% of the moderate income RHNA (80-120% AMI) and 25% of the above moderate income RHNA (>120% AMI) be provided on sites that can accommodate at least four units, including accessory dwelling units (ADUs). In Berkeley, this would be applicable on conforming lots in every district except R-1 and ES-R. The State is working on bills to clarify AB 725.
  5. No Net Loss. (AB 166) As development occurs, the City must continually monitor its residential sites capacity in accommodating its remaining RHNA throughout the entire eight-year planning period. If development on a specific site results in fewer units (total number and by income category) than assumed in the Housing Element, the City must demonstrate remaining capacity is available for the remaining RHNA. For this reason, HCD recommends utilizing a buffer for the lower and moderate sites inventory that exceeds the RHNA. The project team will analyze past trends of opportunity sites to determine an appropriate buffer.

### **Housing Element Update Scope of Work**

The City Council directed staff to take into consideration seven key principles for the Housing Element Update:

- Robust Community Engagement
- Equity – geographic equity, equity in housing types and access
- Affordability and Community Benefits
- Public Safety
- Transit Proximity and Reducing Vehicle Miles Traveled
- Design, Neighborhood Context, and Historic Preservation
- Tenant Protections, Anti-Displacement, and Anti-Speculation Provisions

City staff and the consultant team will be incorporating these principles, amongst others which may be proposed during the public engagement process, in the analysis and development of the Housing Element. Raimi and Associates' project scope comprises four major tasks and the key principles will be integrated into Tasks 2 through 4.

- Task 1: Project Management
- Task 2: Community Outreach and Engagement
- Task 3: Update the Housing Element of the General Plan
  - Housing Needs Assessment
  - Housing Production Constraints
  - Sites Assessment and Inventory
  - Goals, Policies, and Programs
- Task 4: Environmental Review

Council also directed staff to consider specific rezoning strategies, which will be integrated with the Housing Element's site assessments strategy. Rezoning considerations include:

- Location. Focus on Priority Development Areas (PDAs) and locations near transit and commercial corridors.
- Zoning District. Focus in R-1, R-1A, R-2, and R-2A districts to allow for greater flexibility and variety of housing types beyond single-family residential.
- Residential Use Type. Focus on incentivizing the development of accessory dwelling units (ADUs) and junior ADUs on lots containing single-family residential.

This scope of work will integrate with concurrent land use planning efforts, such as planning at the Ashby and North Berkeley BART stations, Southside Zoning Ordinance amendments, Phase 2 of Zoning Ordinance Revision Project (ZORP) and development of objective development standards.

### **Housing Element Update Schedule**

Due to strict deadlines imposed by the State and severe penalties for missed deadlines, it is extremely important that this project stay on schedule. The Housing Element Update timeline is well-defined and finite: the City must adopt the 6<sup>th</sup> cycle Housing Element and the statutory deadline is January 31, 2023. The majority of the housing needs analysis and assessment and sites inventory must be completed by early 2022 in order to allow for sufficient time to conduct a thorough and legally defensible environmental review (see Figure 1: Housing Element Update Project Timeline).

In addition, Zoning Ordinance and General Plan amendments will be identified in early 2022 and reviewed by Planning Commission in Summer 2022 in order to be adopted by City Council in Fall 2022 prior to the adoption of the Housing Element Update in January 2023. Missing the adoption deadline for the Housing Element would require the City to conduct four-year updates to the Housing Element. Rezoning of sites after the January 31, 2023 deadline would subject the sites that are identified for rezoning to by-right approval. However, reused sites from previous cycles are subject to by-right approval regardless of the adoption date of the Housing Element.

**Figure 1: Housing Element Update Project Timeline**



**Housing Element Update**

The key deliverables for the Housing Element Update project include administrative, public, and final HCD-certified drafts of the Housing Element Update, associated environmental review as required by the California Environmental Quality Act (CEQA) and a summary of the outreach and engagement.

The content of the Housing Element and the methodologies used for analyzing constraints and sites inventory are dictated by State law. The Housing Element of the General Plan must include the following:

1. Housing Needs Assessment. Examine demographic, employment and housing trends and conditions and identify existing and projected housing needs of the community, with attention paid to special housing needs (e.g., workforce housing, persons with disabilities). The data package provided by ABAG will form the basis of this section, supplemented by other available data on market conditions, etc.
2. Evaluation of Past Performance. Review the prior Housing Element to measure progress in implementing policies and programs. The City’s Housing Element Annual Progress Reports (APRs) to HCD will form the basis of this evaluation.
3. Housing Sites Inventory. Identify available sites for housing development to ensure there is enough land zoned to meet the future need at all income levels, with consideration of affirmatively furthering fair housing.

4. Community Engagement. Conduct and summarize a robust community engagement program, reaching out to all economic segments of the community, and especially underrepresented groups.
5. Constraints Analysis. Analyze and recommend remedies for existing and potential governmental and nongovernmental barriers to housing development.
6. Policies and Programs. Establish policies and programs to be carried out during the 2023-2031 planning period to fulfill the identified housing needs.

### **Environmental Review**

A thorough and legally defensible CEQA environmental review is critical for adopting and certifying the Housing Element Update and will serve to avoid or minimize future environmental review of specific housing developments. The environmental review process requires an analysis of the Housing Element Update's potential effects on the environment to ensure that required rezones and associated General Plan updates to accommodate the increased housing allocation will generate the lowest possible environmental impacts. The environmental review includes identifying significant impacts associated with the Housing Element Update, identifying and considering alternatives to the proposed Zoning Ordinance or General Plan amendments, and identifying mitigation measures to avoid or reduce potential environmental impacts. The CEQA process also provides the general public and any interested parties with an opportunity to review and comment on the draft Environmental Impact Report (EIR).

### **Outreach and Engagement**

Outreach and engagement are an integral part of this project from initiation to adoption. As prioritized by City Council's March 25, 2021 recommendations, the project will be informed through a robust public participatory process. The consultant team (Raimi and Associates in conjunction with Surlene Grant of Envirocom Communications) will work with staff to provide expansive and inclusive methods of outreach that are tailored to both inform Berkeley's community members and stakeholders on the Housing Element Update as well as encourage productive feedback that will guide the development of the City's housing framework.

Based on the Council's recommendations, the plan for outreach and engagement is framed by 10 community engagement goals listed in Table 2 below.

**Table 1: Community Engagement Goals and associated Participation Strategies**

<b>Community Engagement Goals</b>	<b>Interviews</b>	<b>Survey</b>	<b>Stakeholder Meetings</b>	<b>Public Workshops</b>	<b>City Council Work Sessions</b>
Tailor engagement strategies and approaches to the local context (equity, needs, history)	X	X	X	X	
Open and transparent process	X	X	X	X	X
Promote and advertise public participation opportunities		X		X	X
Leverage input at various points in the process	X	X	X	X	X
Provide a variety of opportunities for convenience (low tech/high touch and high tech/low touch)	X	X	X	X	
Flexibility, in-person and remote engagement	X	X	X	X	
Communicate clearly and visually, simplify complex concepts	X	X	X	X	
Space for participants to be their authentic selves, speak native language	X	X	X	X	
Specific attention to equity and typically underrepresented	X	X	X		
Maintain positive discourse and dialogue	X	X	X	X	X

The consultant team is conducting a thorough stakeholder analysis. For each vulnerable population and key stakeholder group, the team is identifying interests, contributions, and best practices for outreach and engagement. That analysis is used to confirm how specific engagement strategies are applied to inform each phase of the Housing Element planning process. The strategies include 20 interviews, a communitywide survey, 20 small format meetings, three work sessions with the City Council, and three public workshops.

The workflow of the engagement strategy is as follows:

- Interviews. The Consultant team will begin by conducting 20 interviews with housing stakeholders in the Berkeley community. The information will be used to inform engagement strategies, identify housing needs and production constraints, identify opportunity sites, and solicit ideas for housing strategies to include in the Housing Element.
- Survey. A survey will also be distributed at the start of the outreach process to solicit general community input housing needs, constraints, and opportunities.
- Boards & Commissions. In September 2021, City staff will meet with 10 boards and commissions to provide an overview of the Housing Element, identify stakeholders, and invite members to participate in the planning process.
- Small Format Meetings. Throughout the planning process, the Housing Element team will conduct focus groups, meetings, “pop-ups”, and listening sessions with disadvantaged communities, neighborhood groups, advocacy organizations, industry organizations, and others to ensure inclusive and representative participation.
- Public Workshops. Three public workshops will be conducted at key points during the project: The first workshop will inform the housing needs assessment and production constraints. The second workshop is to inform the site assessment and inventory. The third and final workshop is to invite public review and feedback on the draft Housing Element.

The interviews, meetings, and workshops will adhere to State and local public health guidance in effect at the time of the event. The team anticipates that for Fall 2021 and Winter 2022, the activities will include a mix of online synchronous and asynchronous opportunities (using zoom and other technology platforms for interactive participation) and in-person outdoor events.

The team will rely on use of the city’s website, email lists (City’s GovDelivery account), and flyers and mailings for communication. Other distribution channels include: Community Based Organizations (CBOs), Homeowner Associations (HOAs), schools, community/senior centers, and community hubs such as grocery stores and farmers markets.

### BACKGROUND

Berkeley’s draft 6<sup>th</sup> cycle RHNA is 8,934 residential units<sup>2</sup>. The final target RHNA will be issued by ABAG in December 2021. The City is not required to build housing, but it is required to identify and zone sufficient sites to accommodate the anticipated growth

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<sup>2</sup> May 20, 2021. Final Regional Housing Needs Allocation (RHNA) Methodology and Draft Allocations. ABAG. [https://abag.ca.gov/sites/default/files/documents/2021-05/ABAG\\_2023-2031\\_Draft\\_RHNA\\_Plan.pdf](https://abag.ca.gov/sites/default/files/documents/2021-05/ABAG_2023-2031_Draft_RHNA_Plan.pdf)

over the next eight-year period. If actual housing production is less than the RHNA, certain affordable housing projects are subject to a streamlined approvals process (SB 35).

**Table 2: Berkeley RHNA Allocation, 5<sup>th</sup> & 6<sup>th</sup> Cycles**

Income Level	5 <sup>th</sup> Cycle RHNA Units	Units Permitted 2015-2020 <sup>3</sup>	6 <sup>th</sup> Cycle DRAFT RHNA Units
Very Low (< 50% AMI)	532	232	2,446
Low (50 – 80% AMI)	442	41	1,408
Moderate (80 – 120% AMI)	584	91	1,416
Above Moderate (> 120% AMI)	1,401	2,579	3,664
<b>Total</b>	<b>2,959</b>	<b>2,943</b>	<b>8,934</b>

Housing Elements are subject to regulatory oversight by HCD. If the City does not adopt its 6<sup>th</sup> Cycle Housing Element prior to January 31, 2023, it faces a number of penalties and consequences. In addition to facing significant fines of up to \$100,000 per month, the City can be sued by individuals, developers, third parties, or the State. The City would lose the right to deny certain affordable projects and a court may limit local land use decision-making authority until the City brings its Housing Element into compliance.

Failure to comply would also impact Berkeley's eligibility and competitiveness for federal, state, and regional affordable housing and infrastructure funding sources. Many state and regional grant and loan programs require a compliant Housing Element, including the Affordable Housing and Sustainable Communities Program (AHSC), the Local Housing Trust Fund Program (LHTF), and Metropolitan Transportation Commission's (MTC) One Bay Area Grant (OBAG) transportation funding.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The Housing Element Update is expected to result in greater infill housing development potential near transit and in employment-rich areas. Prioritizing density and affordable housing in these areas will incentivize community members to use alternative modes of transportation and reduce vehicle miles traveled (VMT), which are critical for reducing greenhouse gas emissions, and will bring the City closer to meeting its Climate Action Plan and Climate Emergency goals.

### POSSIBLE FUTURE ACTION

In addition to this first work session, the team will make presentations to City Council at two additional work sessions in 2022. The purpose of the work sessions is to inform the Council of the Housing Element Update's progress, share findings from community and stakeholder input, and receive project direction and recommendations from the Council on the immediate tasks ahead.

<sup>3</sup> Based on revised 2015-2020 APR unit counts, accepted by HCD on July 14, 2021

**FISCAL IMPACTS OF POSSIBLE FUTURE ACTION**

The total budget allocated for the Housing Element Update is \$540,000. Berkeley has secured \$325,000 in Local Early Action Planning (LEAP) grant funds, \$83,506 in non-competitive Regional Early Action Planning (REAP) grant funds, \$75,000 in competitive REAP grant funds, and \$56,494 in Community Planning Fees.

**CONTACT PERSON**

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**LINKS:**

1. April 28, 2021. *Housing Element Update and Annual Progress Report*, Off-Agenda Memo from City Manager to Berkeley City Council.  
[https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_General/Housing%20Element%20Update%20042821.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Housing%20Element%20Update%20042821.pdf)
2. March 25, 2021, *Initiation of Public Process and Zoning Concepts for 2023-2031 Housing Element Update*. Report to Berkeley City Council, Councilmember Droste et al.  
[https://www.cityofberkeley.info/uploadedFiles/Clerk/City\\_Council/2021/03\\_Mar/Documents/Initiation%20of%20Public%20Process%20and%20Zoning%20Concepts%20-%20Mayor%2023-25-21.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/City_Council/2021/03_Mar/Documents/Initiation%20of%20Public%20Process%20and%20Zoning%20Concepts%20-%20Mayor%2023-25-21.pdf)
3. March 25, 2021, *Initiation of Participatory Planning for Berkeley's Regional Housing Needs Allocation (RHNA)*. Supplemental report to Berkeley City Council, Councilmember Hahn et al.  
[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/03\\_Mar/Documents/2021-03-25\\_\(Special\)\\_Supp\\_2\\_Reports\\_Item\\_2\\_Supp\\_Hahn\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-25_(Special)_Supp_2_Reports_Item_2_Supp_Hahn_pdf.aspx)