

## Public Revised Draft v4 Comments

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**From:** David Kellogg <david.kellogg@gmail.com>  
**Sent:** Wednesday, November 23, 2022 11:51 AM  
**To:** Housing Element; housingelements@hcd.ca.gov; Connor.Finney@hcd.ca.gov; McDougall, Paul@HCD; West, Shannan@HCD; Klein, Jordan  
**Subject:** Public comment on Berkeley's Housing Element

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On page 78, the HE claims: *"For CEQA determinations, the City reviews all applications according to the procedures in the Berkeley Municipal Code Section 23.404.030.E, which is consistent with Public Resource Code sections 21080.1 and 21080.2."*

However, there is no actual analysis of compliance with 21080.1/.2 (just a naked conclusion of compliance). Instead, the Housing Element describes a process of staff making CEQA exemption "recommendation", but with the actual decision under 21080.1 being delayed until project approval in front of ZAB. This is essentially the status quo of the past few years in Berkeley.

The HE also claims that: *"When a project is exempt from CEQA, the review authority makes the required findings for CEQA exemptions which results in the determination, and approves or disapproves the project at the same meeting, complying with the Permit Streamlining Act's timeline in Gov. Code Section 65950(a)(5)."*

It appears that Berkeley is attempting to allege that even though their CEQA decisions are not made within the timeframe required by 21080.2, that their final approvals are made within the combined CEQA & PSA's deadline, and thus no harm was done. This is misleading and false on numerous levels.

First, even if we assume that Berkeley did approve projects without additional delay, those projects would be subjected to unreasonable negotiation pressures. In particular, if the letter of state law were followed, then the developer would know their project was determined CEQA-exempt and would know that in only 60 days their project would be "deemed approved." Instead, those developers are forced to continue to "play nice", as they lack the legal remedies for delay that state law intended them to have.

Second, an analysis of ongoing permits shows examples of projects where Berkeley's process takes more time than the allowed combination of 21080.1/.2 & 65950(a)(5) (combined, requiring approval 90 days from completeness). As an example, new housing under the CEQA-exempt permit number ZP2022-0098 is scheduled for ZAB approval on 12/8/2022. However, all evidence suggests that the permit was deemed complete on 8/20/22. Under PRC 21080.1/.2, Berkeley should have issued the CEQA-exemption determination by 9/19/22 and then approved the project by 11/18/22. Instead, the City is dragging the approval along for additional time beyond the 65950(a)(5) deadline.

Best,  
David Kellogg

quote of relevant section of the latest HE:

### CEQA Determinations

For CEQA determinations, the City reviews all applications according to the procedures in the Berkeley Municipal Code Section 23.404.030.E, which is consistent with Public Resource Code sections 21080.1 and 21080.2. Once an application is deemed complete, staff recommends the appropriate level of environmental review within 30 days. For complete projects that are categorically exempt from CEQA, staff indicate the exemption recommendation in the 30-day completeness letter. For projects that are not categorically exempt from CEQA or if the impacts of the project are not

known, or if any anticipated significant impacts of the project can be mitigated to “less-than significant,” an initial study will be prepared. The Zoning Officer (for AUP’s) or the Zoning Adjustments Board (for UP’s) make the final determination of whether a project has a significant effect on the environment. When a project is exempt from CEQA, the review authority makes the required findings for CEQA exemptions which results in the determination, and approves or disapproves the project at the same meeting, complying with the Permit Streamlining Act’s timeline in Gov. Code Section 65950(a)(5).

## Public Revised Draft v4 Comments

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**From:** David Kellogg <david.kellogg@gmail.com>  
**Sent:** Wednesday, November 23, 2022 12:11 PM  
**To:** Housing Element; housingelements@hcd.ca.gov  
**Subject:** Public Comment on Berkeley's Housing Element  
**Attachments:** Screen Shot 2022-11-23 at 12.10.20 PM.png

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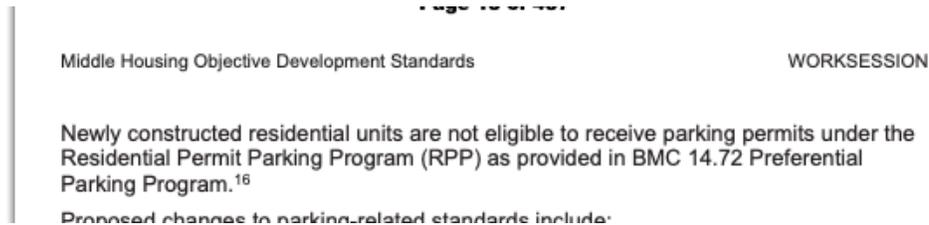
On page 528 of the Housing Element (screenshotted), Berkeley describes a part of its municipal code, namely an exclusion of all new housing from the residential parking permit program.

Pursuant to the published opinion of former AG Kamala Harris: "Vehicle Code section 22507 does not authorize local authorities, in issuing long-term residential parking permits, to distinguish among residents based on the type of dwelling in which they live." - [https://oag.ca.gov/system/files/opinions/pdfs/14-304\\_1.pdf](https://oag.ca.gov/system/files/opinions/pdfs/14-304_1.pdf)

It is clear that denying applications for parking permits from residents who happen to live in newly constructed housing is discrimination against those residents "based on the type of dwelling in which they live" (new versus old) - in direct opposition to the opinion of former AG Kamala Harris.

Berkeley's attempt to preserve on-street parking for the older homeowners may make sense politically, but it is an illegal constraint and it reduces the value and thus feasibility of new housing construction.

Best,  
David



## Public Revised Draft v4 Comments

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**From:** Michael Trujillo <mtrujillo@ebclc.org>  
**Sent:** Monday, November 28, 2022 3:24 PM  
**To:** Housing Element; Klein, Jordan  
**Cc:** Jose.Ayala@hcd.ca.gov; Covello, Zoe; Planning Dept. Mailbox; All Council; Berkeley Mayor's Office; Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Harrison, Kate; Hahn, Sophie; Wengraf, Susan; Robinson, Rigel; mhumbert@CityofBerkeley.info; sarah.scruggs; Jasmine Sozi; Yuri Sadiki-Torres; abguard; Paola Laverde  
**Subject:** RE: Berkeley Housing Element Draft v4 and TOPA  
**Attachments:** Ltr RE TOPA\_Draft v4 Berkeley Housing Element\_11282022.pdf

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Dear Director Klein,

Thank you for the opportunity to comment on Berkeley's updated Draft Housing Element (v4). Please find attached a letter from the Berkeley TOPA Working Group requesting that you add the Tenant Opportunity to Purchase Act back into the plan as a program to prevent displacement and preserve unsubsidized affordable housing. As explained in our letter, TOPA would specifically address comments from the Department of Housing and Community Development that request revisions to the Draft Housing Element to meet the City's obligation to affirmatively further fair housing.

Thank you for your work on this important plan for meeting the housing needs of our community over the coming years. Please do not hesitate to reach out if you would like to discuss these comments or TOPA's potential impact in more detail.

Best regards,  
 Michael Trujillo  
 On behalf of the Berkeley TOPA Working Group



Michael Trujillo | Interim Program Director/Clinical Supervisor, Community Economic Justice Clinic |

Pronouns: he/him

[East Bay Community Law Center](#) | A Clinic of Berkeley Law School

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November 28, 2022

Jordan Klein, Director  
 Department of Planning and Development  
 City of Berkeley  
 1947 Center Street  
 Berkeley, CA 94704

*Via Electronic Mail*

Dear Director Klein,

As you finalize an updated draft of the City’s Housing Element, we are writing to request that you add the Tenant Opportunity to Purchase Act (TOPA) back into the plan to address concerns from the Department of Housing and Community Development (HCD) related to the City’s obligation to affirmatively furthering fair housing (AFFH). In addition to being required by state law,<sup>1</sup> the City’s obligation to AFFH through its housing element ensures Berkeley addresses historical patterns of segregation and becomes a more inclusive and welcoming community over the coming planning cycle. TOPA is an essential tool for achieving these goals.

As you may know, TOPA would provide renters an opportunity to remain in our community when their building is sold by giving them the chance, with help from a supportive nonprofit if needed, to make the first offer or match any offer to buy the property. The policy was inspired by a similar policy that has preserved thousands of affordable homes in Washington, DC and has been tailored to fit the City of Berkeley through years of public engagement lead by the Mayor’s office and a broad coalition of community-based organizations. It was included as program HP-33 in the City’s Public Review Draft Housing Element and garnered a significant number of public comments in support.<sup>2</sup>

In its official comment letter, HCD instructs that while the current draft of the housing element includes various AFFH programs, it should be updated with programs specifically to promote “housing mobility and new housing choices...”<sup>3</sup> TOPA would do just that by providing tenants with voice and choice in what happens when the property they are living in goes up for sale. Tenants could become homeowners by exercising their right to purchase under the policy directly, or organize with their neighbors to form a cooperative to own and manage the property

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<sup>1</sup> Gov. Code §§ 65583(c)(5), 8899.50(a)(1).

<sup>2</sup> The City’s compilation of public comments on draft Housing Element Updates shows 24 comments in support of the program, and only one opposed. *See generally* CITY OF BERKELEY, HOUSING ELEMENT 2023-2031 – PUBLIC COMMENTS (July 27, 2022), available at [https://berkeleyca.gov/sites/default/files/documents/2022-07-29\\_HEU\\_30DayPublicComments\\_0.pdf](https://berkeleyca.gov/sites/default/files/documents/2022-07-29_HEU_30DayPublicComments_0.pdf).

<sup>3</sup> Letter from Paul McDougall, California Department of Housing and Community Development to City of Berkeley RE: The City of Berkeley’s 6th Cycle (2023-2031) Draft Housing Element 5 (Nov. 8, 2022), available at <https://berkeleyca.gov/sites/default/files/documents/Berkeley%20Initial%20Draft%20OUT%20Housing%20Element%20Letter.pdf>.

collectively. Alternatively, the tenants could work with a pre-approved nonprofit housing provider to purchase the property so that the tenants could continue living in their homes at an affordable rate permanently.

These opportunities would represent a sea change for low-income tenants, who currently are left with little choice but to move out when their homes go up for sale due to the fact that Berkeley homes and multifamily housing sell rapidly and often see high offers from investors. The high cost and competitiveness for housing in Berkeley also means that housing mobility is limited for low-income neighborhoods<sup>4</sup> and neighborhoods remain stratified based on income, wealth, and race.<sup>5</sup>

HCD also calls on Berkeley to update its current draft housing element with programs that promote “affordability in higher resource or higher income areas.”<sup>6</sup> TOPA is also essential for this purpose because it presents a unique opportunity for the City of Berkeley to target funding for affordable housing preservation to specific properties in high-resource areas when these properties go up for sale. Properties acquired through TOPA using public funds will be kept permanently affordable. This makes it an invaluable tool for preventing displacement and addressing the concerns HCD has described.

In concluding its letter, HCD reminds the City to continue to engage the community, including organizations that represent low-income and special-needs households. Therefore, we appreciate your attention to these comments, which are submitted on behalf of the TOPA Working Group, a broad coalition of community-based organizations centered on the needs of low-income tenants and families.<sup>7</sup>

TOPA is an essential tool for preventing displacement, preserving affordable housing, and realizing a more equitable future for all residents of Berkeley. The City should not leave this critical program out of its plan to meet the housing needs of our community.

Sincerely,

The Yes 2 TOPA Working Group

CC:

Jose Ayala, HCD Housing Policy Specialist  
Berkeley Planning Commission  
Berkeley City Council

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<sup>4</sup> See City of Berkeley Draft Housing Element, Appendix E, at E-28 (“Issue #3: Lower opportunity areas and environmental conditions concentrated on the western side of the City”).

<sup>5</sup> See *id.* at E-27 (“Issue #2: Patterns of segregation in the South Berkeley areas”).

<sup>6</sup> Letter from Paul McDougall, *supra* note 3.

<sup>7</sup> The full list of Endorsing Organizations of the Yes2TOPA campaign is available here: <https://yes2topa.org/endorsers>.

## Public Revised Draft v4 Comments

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**From:** Sophia DeWitt <sophia@ebho.org>  
**Sent:** Wednesday, November 30, 2022 12:59 PM  
**To:** All Council; Housing Element; Arreguin, Jesse L.; JKlein@cityofberkeley.info; Wu, Grace; Pearson, Alene  
**Cc:** housingelements@hcd.ca.gov; melinda.coy@hcd.ca.gov; david.zisser@hcd.ca.gov  
**Subject:** EBHO Comments on Latest Berkeley Draft Housing Element  
**Attachments:** EBHO Berkeley Revised Draft Comments 11-29-22.pdf

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Hello,

Please find attached a comment letter from East Bay Housing Organizations (EBHO) on the latest draft of the City of Berkeley Housing Element.

Thank you for your hard work and attention to this important process. We look forward to continuing to work with you as the process moves forward.

Sincerely,  
 Rev. Sophia DeWitt  
 Program Director

EAST BAY HOUSING ORGANIZATIONS (EBHO)  
[510-663-3830 ext. 313](tel:510-663-3830) | [sophia@ebho.org](mailto:sophia@ebho.org)  
[538 Ninth Street, Suite 200 | Oakland, CA 94607](#)

*Our [Annual Membership Meeting & Celebration](#) is coming up on November 2! RSVP today to join us for food, drinks, and to vote on the next Board of Directors.*

*Vote yes on Berkeley Measures L, M, and N, and Oakland Measures Q, U, and V! Explore candidate questionnaires for Berkeley, Oakland, San Leandro and Alameda County races on [EBHO's voter guide](#).*

*"Remember who you are and what you represent."-- Mills College motto*

*"Human progress is neither automatic nor inevitable...Every step toward the goal of justice requires sacrifice, suffering, and struggle, the tireless exertions and passionate concern of dedicated individuals." Rev. Dr. Martin Luther King, Jr.*





## East Bay Housing Organizations

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November 29, 2022

To: Jordan Klein, Director of Planning & Development

Alene Pearson, Deputy Director of Planning  
Grace Wu, Senior Planner, Land Use Planning Division

Raimi + Associates

Mayor Jesse Arreguin  
Councilmember Rashi Kesarwani  
Councilmember Terry Taplin  
Councilmember Ben Bartlett  
Councilmember Kate Harrison  
Councilmember Sophie Hahn  
Councilmember Susan Wengraf  
Councilmember Rigel Robinson  
Councilmember Lori Droste

Cc: David Zisser, Assistant Deputy Director, HCD  
Melinda Coy, Land Use and Planning Manager, HCD

### **RE: Comments on the Affordable Housing Components of the City of Berkeley's 6th Cycle Revised Draft (v4) Housing Element**

Dear Planning Staff, Consultants, Mayor Arreguin and City Councilmembers,

Thank you for the opportunity to comment again on Berkeley's Revised Draft Housing Element, following the formal comment letter from the Department of Housing and Community Development (HCD) after the 90-day initial review period.

East Bay Housing Organizations (EBHO) is a member-driven organization working to preserve, protect, and create affordable housing opportunities for low-income communities in the East Bay by educating, advocating, organizing, and building coalitions across Alameda & Contra Costa Counties. Many of our 400+ individual and organizational members live, work, and provide affordable homes in Berkeley.

Once more, we appreciate the enormous work by City staff over the past few years to bring the Housing Element update to this point, including work to maximize affordability for the Ashby and North Berkeley BART station Transit-Oriented Development (TOD) developments and

explore creative avenues for more affordable housing production, particularly with the pursuance of an affordable housing overlay and affordable housing and infrastructure bond.

On July 14, 2022, we submitted a comment letter on the City of Berkeley's Draft 6th Cycle Housing Element in which we called upon the City to commit to programs and policies that will affirmatively further fair housing in a manner that addresses and supports the City's extremely low, very low, and low-income needs.

We offer additional comments with the hope that the City will continue to incorporate them to produce a final document that moves the City in the direction of significant progress to achieve housing justice and meet all of the City's current and future housing needs, with a focus on its extremely low, very-low and low-income needs. As depicted in Table D-2 in Appendix D, the City has **built seven above-moderate income housing units** for every one unit of affordable housing (very low and low-income) over the past 7 years, despite a Regional Housing Needs Allocation (RHNA) goal of one unit of lower income housing for every 1.4 units of above moderate-income housing.

We emphasize the City's responsibility to advance programs and policies with quantified objectives and metrics to address this imbalance, and identify new resources and funding to expand affordable housing production, and affirmatively further fair housing for low-income communities and communities of color. We look forward to continuing to collaborate with the City to make Berkeley a place for all to afford to call home, regardless of income and background.

## **Public Participation**

Now that the City has received a review letter from the State, EBHO urges the City to take the following actions to maximize public engagement and participation in the development of the final Housing Element.

1. The City should immediately schedule and publicize any community workshops, Planning Commission, and City Council work sessions to review the Revised Drafts prior to the adoption of the Final Draft. Currently, only the Planning Commission is scheduled to conduct a public hearing on December 7<sup>th</sup>, therefore any remaining community meetings should be scheduled and shared well in advance to ensure maximum participation.
2. With another Revised Draft (v4) developed, the draft should be published in both a clean version and redlined against the Submission Draft. There should also be a narrative that describes key changes, the reason for those changes, and how such changes will better comply with State law and meet City policies and goals.
3. Publish a summary of public comments received for Revised Drafts, as the City did for the Initial Housing Element Draft, for continued transparency in the process.

Furthermore, the City sent out the Revised Draft Housing Element (v4) for public review on November 23, 2022, with a 7-day public review period before submitting a revised version to the State. We anticipate that, and stress that the 7-day period was an inadequate amount of time for public review and input, due to the very compressed amount of time to review a 650+ page document, let alone in advance of Thanksgiving weekend. We hope that the City considers the impact of such a short public review period on receiving robust and diverse community review and input on the Revised Draft.

We want to acknowledge and commend the City on what has been a very extensive public outreach process to inform the public and solicit public input throughout the Housing Element Update. However, a full public engagement process requires an ongoing dialogue with full transparency about how the City is responding to public feedback and input. This should include summarizing comments received, what changes were made in response to those comments, why particular comments were not incorporated, and highlighting any other changes made by City staff. Thank you for publishing redlined copies of the drafts so far, and we urge the City to continue doing so, so that community members can see that their feedback and suggestions are impacting the document.

### **Affirmatively Furthering Fair Housing**

While we acknowledge the explicit connections to multiple programs identified within the AFFH Actions Summary on pages 152-159, we greatly concur with HCD, that the City is too broad with its action targeting. Identifying “Citywide” for most programs may very well be the intention of impacts, however, it would be more clarifying and effective to have separate evaluations on the key programs to specific neighborhoods within Berkeley. This comment recognizes the AFFH mandate in state law, to take actions to “overcome segregated living patterns with truly integrated and balanced living patterns”, which, cannot be addressed adequately, let alone strongly, if the entire City is identified for most key programs.<sup>1</sup> Adding more specificity to policy and program targeting will align the City more with its mandate to comprehensively implement goals and policies identified, identify the diverse housing needs, and respond to the constraints in Berkeley (sections 2,3,4 respectively).

In our previous letter, we urged the City to overlay identified policies and programs with key recommendations from the 2022 report by the Anti-Eviction Mapping Project, as commissioned by The Berkeley Rent Stabilization Board to better strategize for further policies and programs that produce, preserve, and protect affordable housing opportunities for all. We continue to urge this step, as it would better provide insight into the City’s approach to addressing anti-speculation recommendations. Berkeley’s history of redlining has disproportionately affected Black and Brown communities and today these communities are most at-risk of displacement. It is imperative that policy responses, such as the Affordable Housing Preference Policy and Tenant Opportunity to Purchase (TOPA) Ordinance policies focus on new affordable housing development, preservation, and protection.

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<sup>1</sup> Gov. Code § 8899.50(a).

## Site Inventory

Our previous letter also raised our concerns with the City's proposed site inventory, particularly concerning the lack of potential tax-credit scoring toward the feasibility of sites, and sites with a negligible probability of development over the next Regional Housing Needs Allocation (RHNA) cycle. Accordingly, we agree and emphasize HCD's comments that the City must support the validity of multiple factors indicated for potential redevelopment, with more specific analyses, including an evaluation of prior development trends. Moreover, we reiterate our prior comments below.

## Primary Recommendations

- Remove sites, particularly opportunity sites from the site inventory that have a negligible probability of development over the next RHNA cycle, particularly given that the City considers its capacity to be able to fully accommodate the RHNA without rezoning in the 6th cycle.
  - Perform an analysis of potential tax-credit scoring towards lower-income sites identified in Table C-10 in Appendix C.
  - Ensure that the opportunity sites identified are distributed throughout the jurisdiction under Affirmatively Furthering Fair Housing law. We appreciate the City's consideration of methodologies to evaluate fair housing distribution, such as TCAC opportunity arrears and mapping data from HCD and the Urban Displacement Project.
- Provide a series of maps for each council district or planning area, to allow for accessibility and greater interaction with the map. This would be helpful to allow for more interaction and analysis of the maps, as the singular site inventory map on Page 103 is set to a more challenging scale to interact with.

## Programs & Policies

We thank the City for considering our comments and adding more definitive language and quantified milestones to several policies and programs. We strongly support many of the diverse and necessary policies identified across production, preservation, protection, and preventing and ending homelessness. However, as the HCD letter notes, all programs are also required to demonstrate "beneficial impact" within the 6<sup>th</sup> cycle planning period. We look forward to viewing more detailed deliverables, definitive deadlines, and dates for implementation, as well as provisions on further actions that may be triggered if progress is not met with the planned timeline.

**EBHO strongly supports Program 28, regarding the development and advancement of equitable transit-oriented development (TOD) of the Ashby & North Berkeley BART Stations, with a minimum of 35% affordable housing at both stations.** We second HCD's comment about this program specifically, that the program should be revised to add additional milestones and a fuller plan of action throughout the planning period.

**EBHO supports Housing Program 3 to revise and improve the Citywide Affordable Housing Requirements (AHR) to enhance the effectiveness of the programs in delivering affordable housing, especially for extremely low-income households.** We believe the proposed changes to the AHR must be revised in a conscious way to avoid any unintended adverse impacts on current tenants, including sudden shocks in rent and displacement. We also support the other proposed changes, including incentivizing extremely low-income units by offering low-income units to voucher holders before other income-eligible households, establishing a per-square-foot in-lieu fee, and adding land dedication as an alternative to providing onsite units. We appreciate the diversity in the proposed changes to the AHR and strongly believe they are all beneficial to reach the greater goal of delivering more affordable housing.

**Furthermore, EBHO supports Housing Program 5 and the specific actions listed to assist in preserving deed-restricted housing and ensuring long-term affordability.** We particularly support the Small Sites Program and consider it a valuable effort among acquisition and rehabilitation preservation strategies, and urge the City to make strong efforts to identify funding sources for the Small Sites Program and other programs to acquire and preserve affordable housing. In a supplementary way, the City should look to identify new funding for financial and technical support for community land trusts (CLTs), tenant councils, and cooperatives to support new models for permanent affordability.

**In addition to funding for preservation, we support Housing Program 4, the Housing Trust Fund (HTF), and actions listed to fund a minimum of 500 units of nonprofit affordable housing.** One of the biggest barriers to creating and preserving affordable homes in Berkeley is the lack of money in the HTF, and the City must continue to take further tangible actions that can help generate ongoing revenue for the HTF. We are glad to see the City's identification of the lack of private investment as a **high** priority in response to patterns of segregation in the South Berkeley areas in E3.2 of Appendix E. We request that the City be more specific in what types of "additional grants to fund affordable housing" will be pursued in the next cycle, particularly given the infeasibility of the local bond measure this year. We greatly appreciated the City's interest and efforts to seek a potential General Obligation bond for affordable housing and infrastructure, as well as a vacancy tax, both of which we strongly supported.

In addition to funding, Berkeley can have a positive impact on increasing the supply of affordable homes through policies that prioritize residents and community development organizations over corporate and/or outside investors in the real estate market.

**We are disappointed that the Tenant Opportunity to Purchase Act (TOPA) is solely outlined as an anti-displacement policy in this draft, and the prior public drafts, rather than as a standalone program, which it was in the June Public Draft.** We are concerned by the removal of TOPA as a program, which absolves much of the more definitive timeline and quantified metrics to pursue the program, and suggest that the City supplement previous specific actions identified, by committing to bring the TOPA ordinance before the City Council for adoption within the first year of the housing element, given the work and advocacy over the past several years towards TOPA.

Through the 6th Cycle Housing Element Update, Berkeley is required to assess the housing needs of low-income households and identify specific strategies to conserve and improve affordable housing stock and Affirmatively Further Fair Housing (AFFH). TOPA/COPA is a crucial preservation strategy that would help Berkeley meet those obligations.

In addition to newly identified programs in development to address homelessness and support unhoused residents identified in Housing Programs 13 and 14, we recommend the City continue to work with and expand partnerships with faith-based groups and other organizations to establish safe, legal places for unhoused residents living in RVs and other vehicles to park.

We thank you, again, for the opportunity to comment on Berkeley's Revised Draft Housing Element and we look forward to working with the City as it continues to revise and strengthen the document before certification and adoption.

Sincerely,  
Rev. Sophia DeWitt  
Program Director  
East Bay Housing Organizations

Megan Nguyen  
Policy Associate  
East Bay Housing Organizations

## Public Revised Draft v4 Comments

November 30, 2022

Response to the November 23, 2022 HE update

Communication from Phyllis Orrick (West Berkeley near Cedar and San Pablo Ave.)

### HCD Should Deny the Latest Berkeley Housing Element (HE) Update

HCD should deny the latest Berkeley Housing Element Update based on an analysis of the **Opportunity Sites Inventory (Table 5.4)** because of three serious areas in which it is deficient.

- The HE does not provide any evidence that enough sites are realistically likely to be developed in sufficient numbers to satisfy the state's housing mandate;
- The HE relies on permanently removing land from public property rolls or affinity group ownership (churches) that serve a large cross-section of the city in under-resourced areas;
- The HE fails to achieve the goal to affirmatively further fair housing (AFFH) because of bias against housing development in high-resrouce areas.

These three arguments are made in greater detail below.

**A. Many of the sites listed would not seem likely to be developed in sufficient quantity for Berkeley to meet its housing mandate, and the city has not provided any evidence that the owners intend to develop them for this purpose.**

The site inventory is widely populated by iconic, long-time businesses that are deeply woven into the city's civic and cultural fabric.

Many sites slated for demolition are home to businesses that are neighborhood fixtures; are locally- family-, minority- or women-owned; and support commercial activity like restaurants and retail that enrich the urban and civic fabric.

A few samples:

- Pegasus Books on south Shattuck,
- Ledgers Liquors and Fellini coffee bar on University across from Target at Acton,
- the Berkeley Patients Group,
- Ohmega Salvage,
- East Bay Nursery (all on San Pablo south of University),
- Fenton MacLaren Furniture,
- Paper Plus (San Pablo north of University),
- the CVS on Telegraph south side (formerly Andronico's),
- Poulet restaurant at Virginia and Shattuck,
- Red Oak Realty, and
- Elixir Hair Salon (both on Hopkins near Monterey Market).

Have the owners, businesses, pastors and congregations, and service providers associated with these properties informed the city of their willingness to sell or otherwise close down their churches, parking lots, showrooms, offices, clinics, restaurants, or retail outlets and replace them with housing? It strains belief to think that they have. And the city offers no evidence of any such agreements. Until it does, the HCD should reject this patently dishonest response.

In short, this is not a good faith effort at generating sorely needed missing middle housing for low- and middle-income workers that keep the city running, or at moving more housing growth into better-resourced neighborhoods.

Granted, taken one at a time, a case could be made for these and other businesses on the list to be eliminated down the line, but it strains belief that this is what the owners intend for all of these on the list, over the next few years. And that is what must happen for the city to comply with the law. This alone should cause **HCD to deny the HE update**.

**B. The inventory relies of de-accessioning public land from the city's property rolls and converting church-owned land to private use, both of which actions will disproportionately impact lower-resourced communities.**

Two public-land sites stand out on this list:

- the City of Berkeley Lifelong Medical Center on University at 6th and a block to the north,
- the West Berkeley Senior Center.

Their elimination in an already lower-resourced, historically disinvested part of the city would run counter to the city leadership's professed intention to make up for past neglect.

Interestingly, of the church land on the list, there is none on Holy Hill that I could see, mainly in the flats and in lower-resourced parts of the city,

- Covenant Presbyterian Church at 1760 University,
- Progressive Baptist Church at 1728 Alcatraz, and
- Immanuel Baptist Church at 1505 Hopkins.

**C. The inventory fails to affirmatively furthering fair housing (AFFH) because it biases dense development sites away from higher-resourced areas.**

The inventory lumps most of the highest density housing in **lower-resourced parts of the city** (the lowlands) and sprinkles 1-unit single-family homes in a few parcels in higher-resourced neighborhoods and ignores altogether potential for dense development in entire swaths of these in **high-resourced areas** such as:

- North Shattuck,
- Upper Solano,
- College Ave/Elmwood,
- Claremont,
- Holy Hill,

- Live Oak, etc..
- Two or three parking lots on Solano are included for higher-density development, but the loss of at least two of them, 914 Fresno and 915 Colusa, would severely affect the feasibility of the Solano Ave. Andronico's.

As an illustration of the skew toward **low-density, low-affordability development in the hills**, nearly all the vacant lots in the hills are listed at **one unit per lot**. And even when there is more than one unit on a site, the city planners' allocation is extremely low: they show the former site of Berkeley Unified School District (BUSD) property at **Oxford Elementary School** as listed for seven units, while the BUSD appraiser said it could hold 10-20 SFH under existing zoning, and with missing middle the number of units could more than double if townhouses were constructed.

There is one final category that should be included in HCD's consideration: in the huge reliance in the HE on property owners choosing to build housing on **existing parking lots** or on the sites of **shuttered businesses** that are zoned commercial or industrial (again, mainly in the flats and under-resourced areas).

### **The Inventory of Opportunity Sites is reason enough alone for HCD to deny the HE Update.**

In conclusion, the HE inventory of Opportunity sites is so flawed as to require HCD to deny the entire Berkeley HE update of November 23, 2022.

—signed:

Phyllis Orrick Berkeley resident West Berkeley  
 Sarah Bell, East Bay YIMBY  
 Raul Maldonado, East Bay YIMBY  
 Theo Gordon, East Bay YIMBY  
 Benjamin Kadish

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Below are photos of a few of the sites in the HE.

9:30 



# 3030 Telegraph Ave

3030 Telegraph Ave, Berkeley, CA 94705

 30 min

 **Directions**

 **Start**

 **Directory**





# 1575 Hopkins St

1575 Hopkins St, Berkeley, CA 94707

Building · 0.8 mi





1:56



Google

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East Bay Nursery



## East Bay Nursery

4.6 ★★★★★ (165)

Plant nursery · 0.7 mi





