

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

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January 30, 2023

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

Thank you for submitting the City of Berkeley's (City) revised draft housing element that was received on December 1, 2022, along with revisions received on January 30, 2023. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. HCD considered comments from State Senator Nancy Skinner, Councilmember Terry Taplin, East Bay for Everyone, Berkeley Neighbors for Housing and Climate Action, East Bay YIMBY, David Kellogg, Jennifer Chatman, and Clifford Fred pursuant to Government Code section 65585, subdivision (c).

The revised 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 completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09... (Gov. Code, § 65583, subd. (c)(1).)*

**Suitability of Nonvacant Sites:** The element now lists opportunity sites by 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 (Table C-10: Opportunity Sites). However, as noted in the prior review, the element must support the validity of the various 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.

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 Regional Housing Needs Allocation (RHNA).

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 should be revised, as follows:

- *Program 28 (BART Station Area Planning):* The Program now commits to various actions to facilitate development and to evaluate the progress of development by January 2026 but should also commit to when alternative sites will be identified if necessary.
  - *Program 30 (Accessory Dwelling Units):* The Program commits to identify additional efforts, such as rezoning or pre-approved building plans. However, the Program should commit to when these additional efforts will be completed (e.g., six months to one year).
2. *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...(Gov. Code, § 65583, subd. (c)(3).)*

Program 34 (Permit Processing): The Program commits to analyze and develop permit procedures to address identified constraints but should also specifically commit to remove constraints and establish appropriate procedures by a specified date. This specific commitment should reflect all identified constraints in the analysis (pp. 76 to 80).

3. *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).)*

Goals, Actions, Metrics, and Milestones: While the element add actions to improve housing mobility, including housing choices and affordability, throughout the City, it must still be revised, as follows:

- *Program 27 (Priority Development Areas):* The Program now commits to increase allowed densities in all transit and commercial corridors, especially between formerly red-lined and higher resource areas and initiate changes within one year of certification. In addition, the Program should target relatively higher-income areas, specifically commit to when zoning changes will be completed and include a numerical target such as the number of added units and minimum densities or floor area ratios.
- *Place-based Strategies:* While the element includes several place-based strategies for neighborhood improvements, it should include additional actions beyond housing improvements such as infrastructure, streetscapes, active transportation, community amenities, parks, and other community improvements. These actions should be targeted geographically targeted with numerical targets or metrics for the planning period.
- *Mid-term Evaluation:* The element should include a mid-term evaluation of progress and effectiveness of Affirmatively Furthering Fair Housing (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.

HCD understands the City adopted the housing element, including the revisions received on January 30, 2023, at the January 18, 2023, City Council meeting. Pursuant to Government Code section 65585 (g), the City must promptly submit a copy of the adopted housing element to HCD for review.

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 make prior identified sites available or accommodate the RHNA, including for lower-income households, shall be completed no later than one year from the statutory deadline pursuant to Government Code section 65583, subdivision (c)(1)(A) and Government Code section 65583.2, subdivision (c). 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 these rezones 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.

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/planning-and-community-development/housing-elements> 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.

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>.

HCD appreciates the responsiveness, collaboration, and commitment 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,



Paul McDougall  
Senior Program Manager