

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



September 28, 2022

Christina Mun, Interim Director
Housing & Community Development Department
City of Oakland
250 Frank H. Ogawa Plaza
Oakland, CA 94612

Dear Christina Mun:

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

Thank you for submitting the City of Oakland's (City) draft housing element update received for review on June 29, 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 August 12, 2022 with Audrey Lieberworth, Acting Planner III, Lakshmi Rajagopalan, Principal Planner, Michael Branson, Deputy City Attorney, Laura Kaminski, Strategic Planning Manager and William Gilchrist, Planning Director, as well as your consultants, Rajeev Bhatia, Alison Moore, and Mayu Tanaka. In addition, HCD considered comments from several stakeholders and members of the community, 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.

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 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, 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 must continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available while considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

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

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

HCD appreciates the hard work and dedication of Audrey Lieberworth, Acting Planner III, Lakshmi Rajagopalan, Principal Planner, Michael Branson, Deputy City Attorney, Laura Kaminski, Strategic Planning Manager and William Gilchrist, Planning Director, as well as your consultants, Rajeev Bhatia, Alison Moore, and Mayu Tanaka in preparation of the City's housing element. If you have any questions or need additional technical assistance, please contact Shawn Danino, of our staff, at shawn.danino@hcd.ca.gov.

Sincerely,

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

Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF OAKLAND

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 <https://www.hcd.ca.gov/hcd-memos>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <https://www.hcd.ca.gov/building-blocks> 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).)*

Local Data and Knowledge: While the element incorporates some analysis based on local data and knowledge, the element should review and incorporate public comments into the assessment of fair housing.

Racially Concentrated Areas of Affluence (RCAs): The element should analyze RCA. The analysis should evaluate pattern and trends at a local level (comparing areas within the City) and regional level (comparing the City to the region). Based on the analysis, the City should consider additional actions (not limited to the regional housing need allocation (RHNA)) to promote housing mobility and improve new housing opportunities throughout the City.

Regional Analysis: The element generally describes local patterns and trends with regards to disproportionate housing needs but must also analyze Oakland relative to the rest of the region regarding disproportionate housing needs, including displacement risks.

Affirmatively Furthering Fair Housing (AFFH) and Identified Sites: While the element provides some analysis of the sites in its inventory with regards to AFFH, it should analyze the lack of units in several higher opportunity areas (p. C-84), including but not limited to Rockridge (labeled North Oakland / Adams Point) and the area surrounding the Rockridge Bay Area Rapid Transit (BART) station. A complete analysis should fully assess how the site inventory is expected to improve and/or exacerbate fair housing conditions. This analysis should address the location, number of units by income group, magnitude of the impact and any isolation of the RHNA and could consider topics such as existing or proposed anti-displacement policies and place-based investments, and how such strategies will improve fair housing conditions when paired with the identified sites. Based on the outcomes of this analysis, the element should add or modify programs.

Goals and Actions: While the element provides additional analysis and identifies contributing factors to fair housing issues, it does not include sufficient action to overcome patterns of segregation and foster inclusive communities. As a result, programs must be added as appropriate to sufficiently respond to contributing factors to fair housing issues. In addition, all actions related to AFFH must contain specific commitment, timing, geographic targeting and metrics or numerical targets.

The element may, for example, as discussed on the August 11, 2022 call, revise Program 3.5.3 to make a firm commitment for removing design review requirements and establishing development standards for missing middle housing types. The element may also, for example, revise Action 3.5.3 to establish a social housing pilot program. Additionally, the element should commit to assessing and revising programs through a mid-cycle review. Please see HCD's AFFH memo for more information:

https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf#page=23.

2. *Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households. (Gov. Code, § 65583, subd. (a)(1).)*

Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition. (Gov. Code, § 65583, subd. (a)(2).)

Analyze any special housing needs such as elderly; persons with disabilities, including a developmental disability; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. (Gov. Code, § 65583, subd. (a)(7).)

Extremely Low-Income Households (ELI): While the element includes some information on ELI households relative to race, it should also evaluate tenure, overpayment, resources and strategies available and the gap and magnitude of housing needs to better formulate policies and programs.

Housing Conditions: The element provides some information on age of the housing stock. However, it must estimate the number of units in need of rehabilitation and replacement. For example, the analysis could include estimates from a recent windshield survey or sampling, estimates from the code enforcement agency, or information from knowledgeable organizations. For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/housing-stock-characteristics.shtml>.

Persons Experiencing Homelessness: The element provides analysis of persons experiencing homelessness. However, given the magnitude of the need, the City should evaluate resources and strategies, gaps in addressing needs and formulate appropriate strategies to address the unmet need. For example, the element could identify and

evaluate capacity for emergency shelters, permanent supportive housing and other housing or shelter types relative to needs and address unmet needs through program actions.

3. *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).)*

Parcel Listing: The element must include a parcel listing or sites inventory intended to accommodate the regional housing need allocation (RHNA). The sites inventory should list parcels by assessor parcel number, size, general plan designation, zoning, existing use, realistic residential capacity and anticipated affordability. The description of existing uses should be sufficiently detailed to facilitate an analysis of the potential for additional development and may utilize indicators of potential such as age of structure, existing versus allowable floor area and improvement to land value. If a site is owned by a city or county, the description must include whether there are any plans to dispose of the property.

Pipeline and Potential Development Projects: While the element may utilize pipeline and potential development projects toward the RHNA, it must also demonstrate their affordability and availability in the planning period. Affordability must be demonstrated based on actual sales price, rent level or other mechanisms ensuring affordability (e.g., deed restrictions). Availability should account for the likelihood of project completion in the planning period and should address the status, necessary steps to issue permits, any barriers to development and other relevant factors. Given the element's reliance on pipeline projects, the element must include programs with actions that commit to facilitating development and monitoring approvals of the projects (e.g., coordination with applicants to approve remaining entitlements, supporting funding applications, expediting approvals and monitoring of project progress, including rezoning or identification of additional sites, if necessary).

Realistic Capacity: While the element lists realistic residential capacity assumptions by various zoning districts (Table C-11), it should provide supporting information for these assumptions based on recent development history, including affordability. In addition, this calculation should also account for the likelihood of 100 percent non-residential development. The element lists recent trends for residential development in non-residential zones but should also consider the development activity of 100 percent non-residential uses. For example, the element could analyze all development activity in these nonresidential zones, how often residential development occurs and adjust residential capacity calculations, policies, and programs accordingly. This analysis may incorporate any proposed policies such as residential performance standards, prohibition of commercial uses and should clarify that all zones allow residential uses, particularly 100 percent residential uses.

Nonvacant Sites: The element must include an analysis demonstrating the potential for additional development on nonvacant sites. While the element mentions underutilized

sites were identified based on assessed value (AV) and floor area (FAR) ratios, it must support the validity of these assumption in demonstrating the potential for redevelopment. For example, the element could utilize recent development activity. In addition, the element should consider additional factors such as building age, structural conditions, expressed interest in residential development and reflect those values in the sites inventory. Finally, the element should account for the extent existing uses impede additional residential development including market demand for the existing use and existing leases or contracts that would perpetuate the existing use or prevent additional residential development. For example, based on comments received, the City should also address the crediting of a site at 288 9th Avenue, where public comments reported a recently completed nonresidential project being credited for 254 units.

In addition, HCD notes the element currently does not rely on nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households. If future versions of the housing element rely upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households, the housing element must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue 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.

City-Owned Sites: The element briefly describes its strategy to use City-Owned sites to accommodate a portion of the RHNA for lower income households (p. C-77). However, the element should identify which sites specifically are owned by the City and include a program with numerical objectives that ensures compliance with the Surplus Land Act, provides incentives and actions along with a schedule to facilitate development of City-owned sites. Actions should include outreach with developers, issuing requests for proposals, incentives, fee waivers, priority processing and financial assistance. The element should also update its Actions (3.3.1 and 3.3.4, for example) to describe a schedule of actions and, as described on the August 11, 2022 call, the timeline for completion of an Environmental Impact Report for these sites.

Alternative Adequate Sites: The sites inventory uses the adequate sites alternative to credit 82 units across two assisted housing sites that were acquired by the City to preserve affordability (p. C-27). However, the analysis must confirm compliance with all relevant requirements pursuant to Government Code 65583.1. This analysis may utilize HCD Alternate Adequate Sites checklist available at <https://www.hcd.ca.gov/adequate-sites-alternative>.

Zoning for a Variety of Housing Types:

- *Emergency Shelters:* The element mentions emergency shelters are permitted in various areas throughout the City. However, the element should also clarify shelters are permitted without discretionary action and discuss available acreage, including typical parcel sizes and the presence of reuse opportunities. In addition, the analysis should address proximity to transportation and services and any conditions inappropriate for human habitability.

- *Permanent Supportive Housing*: Supportive housing shall be a use by-right in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses pursuant to Government Code section 65651. The element must demonstrate compliance with this requirement and include programs if necessary.
 - *Employee Housing*: The element must demonstrate zoning is consistent with the Employee Housing Act (Health and Safety Code, § 17000 et seq.) or add or modify programs. Specifically, section 17021.5 requires employee housing for six or fewer employees to be treated as a single-family structure and permitted in the same manner as other dwellings of the same type in the same zone.
 - *Small Units*: Pursuant to public comments received, the City should consider a variety of naturally affordable housing types as part of its strategy, including efficiency units, cohousing units, and any units tied to a social housing programs and pilots. The element may also, for example, consider limited equity condominiums, pursuant to public comments.
 - *Single Room Occupancies (SRO)*: The element describes the zones in which SROs are currently permitted. However, given the success of SROs in providing housing for Extremely Low Income (ELI) households, the element should also describe how it will encourage SRO development.
4. *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 element identifies many land use controls as potential constraints on a variety of housing types. However, the analysis should analyze land use controls independently and cumulatively with other land use controls. The analysis should specifically address requirements related to Floor Area Ratios, open space requirements, setbacks, and limits on allowable densities. The analysis should address any impacts on cost, supply, housing choice, affordability, timing, approval certainty and ability to achieve maximum densities and include programs to address identified constraints.

Processing and Permit Procedures: The element lists design review criteria (p. F-57), however, it should also evaluate those criteria for impacts on cost, timing and especially approval certainty. For example, one finding is the project will “enhance desirable neighborhood characteristics”. The element should explain how that finding is applied and met, whether there are any impacts on cost, timing and approval certainty and add or modify programs to address any identified constraints.

Housing for Persons with Disabilities: The element describes its approval procedures for group homes for seven or more persons (p. 592), including limitations or approval criteria. However, the element should analyze these approval criteria as constraints on

approval certainty and objectivity for housing for persons with disabilities and include programs as appropriate.

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 through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions. (Gov. Code, § 65583, subd. (c).)*

A large share of the programs lists implementation timelines as “ongoing.” While this may be appropriate for some programs, programs with specific implementation actions must include completion dates resulting in beneficial impacts within the planning period. Programs that should be modified to add discrete timing include (but are not limited to) 1.1.3 (Strengthen Ellis Act Ordinance), 1.1.5 (Provide eviction defense and implement a right to counseling), 1.1.6 (Expand rent control in a limited manner to maintain affordability), 1.1.9 (Continue and expand the Tenant Protection Ordinance), 1.1.10 (Enforce the tenant right to return), 2.1.1 (Support home rehabilitation programs), 2.1.6 (Explore funding to improve indoor air quality), 2.2.5 (Extend local replacement unit provisions), 3.2.5 (Reduce constraints to the development of ADUs), 3.3.2 (Expansion of Section 8 vouchers), 3.3.3 (City of Oakland Rental Assistance Program), 3.3.4 (Develop permanent housing affordable to extremely-low income households on public land), 3.3.9 (Adjusting or waiving City fees and payment timing for affordable housing developments), 3.3.12 (Continue the Acquisition and Conversion to Affordable Housing Program), 3.3.13 (Expand availability of predevelopment funding and low-cost debt products for affordable housing development), 3.3.14 (Evaluate the creation of a leveraged acquisition fund or debt equity fund for small sites to support housing acquisition), 3.3.17 (Support low-income grassroots and BIPOC affordable housing developers), 3.7.1 (Incentivize development of senior housing and provide financial assistance to developers of housing for seniors and persons with special needs), 3.7.4 (Implement the sponsor-based Housing Assistance Program), 3.7.5 (Encourage a range of unit sizes including housing that matches a local household needs and family sizes), 3.8.1 (Continue to implement the Vacant Property Tax), 4.1.4 (Provide needed support and income to people who have been homeless), 4.2.4 (Increase oversight of homelessness strategies, investments and encampment operations with Homelessness Advisory Commission), 4.3.1 (Finance Construction and Maintenance of permanent supportive housing and deeply affordable housing), 5.1.1 (Provide First time home ownership incentives), 5.2.4 (Secure funding from AHSC Program), and 5.2.7 (Encourage new affordable housing in higher resource neighborhoods).

Additionally, several programs and actions have timelines that should be moved earlier in the planning period to ensure a beneficial impact. Examples include Programs 3.3.10 (Enhanced Infrastructure Financing District) and 3.5.2 (Support Housing Cooperatives).

Additionally, programs must have specific commitment to clear outcomes or deliverables. Several programs include actions with no description of how those actions will be implemented (e.g., “support”, “study”, “explore”, “evaluate”, etc.). For example, Program 3.5.2 states that the City will "support housing cooperatives, co-living, and cohousing models". However, it does not state when and how their housing types will be available. Programs should be amended, as appropriate to include specific commitment. Examples include Programs 1.1.5 (Eviction Defense), 1.1.10 (Tenant Right to Return), 1.1.13 (Preventing Displacement / Homelessness), 3.3.15 (Citywide Density Bonus Expansion), 3.3.16 (Consider revising Real Estate Transfer Tax), 3.4.3 (Revising Parking Standards), 3.4.4 (Revising Open Space Requirements) and 5.2.9 (Accountability Measures for Housing Programs).

Based on public comments received, the City should also consider revising Action 2.2.5 to develop procedures that find and support displaced tenants after demolitions, as well as ensuring that projects pursuing SB-330 protections have sufficient replacement units for tenants at risk of displacement.

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 A3, 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.

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 Finding 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 must include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs. Programs to AFFH should go beyond status quo actions, include specific commitment, timing, geographic targeting and metrics or numerical targets and should generally address housing mobility, encourage new housing choices in higher resource areas, improve place-based strategies toward community revitalization and protect existing residents from displacement.

5. *The housing program shall preserve for low-income household the assisted housing developments identified pursuant to paragraph (9) of subdivision (a)... (Gov. Code, § 65583, subd. (c)(6).)*

Program 2.2.2 (Preserve Affordable Housing) should be revised with specific commitment to comply with noticing requirements, coordinate with qualified entities, assist with funding or support funding applicants and provide education and support to tenants.

6. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent... (Gov. Code, § 65583, subd. (c)(7).)*

Program 3.2.4 (Incentives for Accessory Dwelling Units (ADU)) should commit to should monitor permitted ADUs and affordability every other year and take appropriate action such as adjusting assumptions or rezoning within a specified time (e.g., 6 months) if assumptions are not realized.

C. Quantified Objectives

Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame. (Gov. Code, § 65583, subd. (b)(1 & 2).)

While the element includes quantified objectives for new construction, rehabilitation and conservation by income group, it could consider quantified objectives for conservation (beyond at-risk preservation). For your information, the quantified objectives do not represent a ceiling, but rather set a target goal for the City to achieve, based on needs, resources, and constraints.

D. 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).)

The City made extensive efforts to reach the public, including hosting events and requesting input on suitable sites. Nonetheless, several comments questioned the lack of units in North Oakland, specifically around the Rockridge BART station, as concerns around why several eligible parcels were excluded from the inventory, and these issues must be addressed.

The City should also commit to revising Action 3.7.5 to studying second egress requirements. It can also discuss prioritizing cohousing opportunities, reducing lot size minimums in some zones to 3,000 square feet, finding suitable parcels for housing in the Dimond District, developing preapproved missing middle housing types in high opportunity areas, developing programs to address indoor air quality, analyze the cost reductions expected from removing parking minimums, analyze how the placement of historic districts relate AFFH and establish firmer commitments around the development of live/work units.