

EAST BAY FOR EVERYONE

To: Planning and Development Department, City of Berkeley
From: East Bay for Everyone
Date: July 14, 2022
Subject: *Review of City of Berkeley's Draft Housing Element for 2023-2031*

East Bay for Everyone is a network of people fighting for the future of housing, transit, tenant rights, and long-term planning in the East Bay. We appreciate the opportunity to comment on the City of Berkeley's draft Housing Element Update for 2023-2031. In conducting our review we have spotted serious issues with the draft that risks rejection by the Department of Housing and Community Development, including the City's failure to create inclusionary zoning in residential districts, unrealistic assumptions made in the Opportunity Sites tables, and deficiencies regarding the City's duty to affirmatively further fair housing (AFFH). We describe these issues and deficiencies in more detail below and offer solutions to remedy them.

The State Legislature recently clarified the purpose of the housing element to designate and maintain "a supply of land and adequate sites **suitable, feasible, and available** for the development of housing sufficient to meet the locality's housing need for all income levels." (emphasis added).¹ In its current form, the draft Housing Element identified many sites that are unsuitable, infeasible and/or unavailable for development for the proposed income levels.

Affirmatively Furthering Fair Housing (AFFH)

Federal and state law requires that Berkeley's Housing Element take affirmative steps to further fair housing. Under Title VIII of the Civil Rights Act of 1968 and its implementing regulations, Berkeley is required to take "meaningful actions" to "overcome patterns of segregation and foster inclusive communities" when designing its housing plans and policies.² In 2018, California Assembly Bill 686 was passed to expand upon these civil rights, requiring that cities "address significant disparities in housing needs and in access to opportunity, replacing segregated patterns with truly integrated and balanced living patterns, transforming racially

¹ Cal Gov. Code § 65580(f).

² 24 CFR § 5.152.

and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.”³

We are disappointed to see that in its current form, the draft Element for Berkeley would preserve large swaths of the City in amber, allowing them to retain their exclusionary zoning status. Berkeley has proposed concentrating nearly 100% of its planned affordable housing sites on high-injury, high-traffic corridors, while large parts of North Berkeley and the Berkeley Hills remain restricted as single-family or two-family. We believe these deliberate actions on the part of the City violate AFFH requirements under federal and state law and urge Berkeley to go back to the drawing board.

Single-family zoning was explicitly designed to segregate neighborhoods by race and by class, excluding people of color and poorer people from living near wealthier residents. This discriminatory policy has left Berkeley a largely segregated city, with our neighbors of color living in the south and west sides of the city while whiter, affluent residents live in the north and east sides. Residents who live in South and West Berkeley face higher pollution and lack access to the same opportunities, resulting in worse health, social and economic outcomes compared to residents in North Berkeley and the Hills.⁴ This is especially true for sites near the high-traffic corridors of San Pablo, University, and Shattuck, where residents face high levels of diesel particulate matter from automobiles.⁵ In addition to harmful air pollution, these high-traffic arterials are part of Berkeley’s high-injury network, contributing disproportionately to traffic violence and causing numerous deaths and injuries every year.⁶

Given the known dangers of living near these corridors, we are perplexed that the current Draft Housing Element concentrates nearly 100% of the proposed affordable housing on these same high-injury, high-pollution corridors, while the areas with the cleanest air, highest opportunity and safest streets in Berkeley remain virtually unchanged. Because these roads are all part of Berkeley’s high injury network, focusing dense development there, at the exclusion of neighborhoods that are safer for vulnerable road users, is also contrary to Berkeley’s goals to promote alternative transportation methods for new residents. Instead, to comply with its AFFH obligations, it is critical for Berkeley to plan for more affordable housing in neighborhoods that have historically excluded people of color and of lesser means such as North Berkeley, which are currently zoned for exclusionary uses and dominated by detached single-family homes. Our residents and future residents who are not of wealthy means deserve

³ Gov. Code, § 8899.50, subd. (a)(1).

⁴ See e.g. Cal EnviroScreen and the Healthy Places Index.
<https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>;
<https://map.healthyplacesindex.org/?redirect=false>

⁵ <https://map.healthyplacesindex.org/?redirect=false>

⁶ <https://berkeleyca.gov/sites/default/files/2022-02/Vision-Zero-Annual-Report-2020-2021.pdf>

access to neighborhoods that are safe and free from excessive pollution, noise, and danger from automobiles. Concentrating new housing on high-injury, high traffic corridors only perpetuates environmental injustices faced by communities who have been historically excluded from single-family neighborhoods. The City should adjust its zoning in North Berkeley to accommodate for inclusionary uses and plan for more affordable housing instead of concentrating it on high-traffic corridors.

Opportunity Sites

Our members have found numerous issues with the City’s methodology and specific selection of parcels for development, which leads to parcels that are not suitable for development or that cannot reasonably accommodate the percentage of affordable housing proposed. To start, we note that only 15% of the parcels in the Opportunity Sites table are vacant, which is itself a failure to prioritize sites that are “available.”⁷

Below are a few examples of problematic inventory sites, not to be construed as an exhaustive list.

APN	Address	Units	Description
060 243402 001	1550 Hopkins St	35	Currently Monterey Market. This is a cherished community institution that provides essential goods for the surrounding neighborhoods. There is no evidence that the owner intends to develop housing in the site.
052 153201 600	1728 Alcatraz Ave	99	Progressive Missionary Baptist Church. The site is less than half an acre, but no explanation is provided as to why this use will discontinue or why the property owner has the capability to build 99 below-AMI homes. We do not think this site is very likely for development absent evidence of interest from the property owner.
057 209701 401	811 University Ave	116	Yoga and spa studios. A recent project across the street at 800 University, which has the exact same zoning, was only 58 apartments on 0.65 acres. We think it is unlikely that this site will be developed at twice the density of 800 University. There is no evidence that the current use will discontinue during the planning period, or that the owner is interested in building 100% BMR.

⁷ Cal Gov. Code § 65580(f).

057 205901 000	1909 University Ave	17	This site contains a Wellness Center that is providing essential social services. This is an old building built in 1951 that would have to be demolished to create new housing. Because it is less than half an acre, it should not be listed on the housing element without a letter from the property owner indicating they are planning on developing housing.
056 193300 602	2332 San Pablo Ave	139	Currently East Bay Nursery, providing plants & garden supplies to West Berkeley residents. All proposed units <80% AMI. This is a thriving business and it's very doubtful that the owner wants to build any housing on the site, let alone low-income housing.
059 226301 001	1550 Shattuck Ave	98	Andronico's Grocery Store and parking lot. This is a thriving business and there is no indication that the owner intends to sell. Grocery stores provide essential goods to the community.
060 235401 001	1049 Gillman St.	82	Currently a liquor store and Dollar Tree. No indication that the owner intends to develop housing here, let alone 100% affordable housing. This is very close to a similar site (1201-1205 San Pablo, combined .29 acres) planned for 66-units, only five of which are affordable. Another nearby proposed site (1212 & 1214 San Pablo Ave) was approved for 104 units, 9 < 50% AMI. Given this, the total proposed unit density does not seem unreasonable, but the designation of all <80% AMI units is wishful thinking. It is more reasonable to assume a max of 10-15% affordable housing will be developed using the state density bonus.
057 203000 100	2108 Allston Way	130	Current commercial uses: a FedEx Office, a Verizon Store, and a Site for Sore Eyes. Because it is less than half an acre, it should not be listed on the housing element without a letter from the property owner indicating they are planning on developing housing.

			Since this was included in the previous cycle, it will be required to be 20% BMR by right.
055 189201 600	2349 Shattuck Ave	31	Currently Pegasus Books. It is highly unlikely that such a cherished bookstore would be demolished and there is no evidence that the owner intends to develop housing.
057 203401 200	2154 University Ave	103	This is a UC owned site, 2022 plan designates this as future parking garage, see https://berkeley.app.box.com/s/3t73alasjoajzfarrw9hjqyiaigdothv page 126
057 202900 702	2113 Bancroft Way	103	This is a UC owned site, 2022 plan designates this as a future academic building, see https://berkeley.app.box.com/s/3t73alasjoajzfarrw9hjqyiaigdothv page 126
058 212800 301	1620 San Pablo Ave	115	City recently purchased this building as a Project Homekey site. Given the purpose of Homekey funds is unlikely Berkeley plans to demolish the property and rebuild it at a higher density.
055 184002 401	2655 Telegraph Ave	130	This is currently a CVS. There is no evidence that the owner wants to sell. The housing element assumes 100% affordable, which is highly unlikely.
058 218101 905	1899 Oxford	30	Currently a gravel parking lot at Oxford and Hearst. This site should be rezoned for higher density given its proximity to campus.
055 189700 103	2480 Shattuck	26	This is currently a Trek bicycle shop and was also included in the last cycle.
055 185000 303	2750 Dwight Way	18	This is not a parking lot, it is an apartment building. However, there is a parking lot at APN 55-1867-12 one block away.

063 316001 402	20 Bay Tree Ln	6	The housing element proposes six units on a hillside lot. It is highly unlikely that there will be a lot split that would result in this many homes in a hillside overlay single family zoned neighborhood.
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Many of these sites suffer from flaws in terms of feasibility and availability for the proposed development. Many of these parcels are currently non-vacant sites used by thriving businesses, including grocery stores, plant nurseries, and other businesses that provide critical services to Berkeley residents. The site inventory also conflicts with the extensive process underway in the Hopkins Street redesign around how to accommodate customers at Monterey Market, which assumes that it will remain a grocery store. Currently productive sites may be more feasible for redevelopment if Berkeley would be willing to increase the base density.

Berkeley’s projections for affordable housing <80% AMI are unrealistic and fail to include affirmative evidence that the parcel owner intends (a) to build housing on that site, (b) that is affordable, and (c) the owner knows how it will be financed. The site inventory explains “Under state law, the “default density” for most jurisdictions in urban counties is 30 units/acre. Default density refers to the density considered suitable to encourage and facilitate the development of affordable housing.” This assessment completely disregards any conception of how realistic it is that any, much less all of the proposed sites could be 100% affordable.

The 34 largest proposed Opportunity Sites (in terms of total units) are all 100% affordable housing projects. Every single unit of required affordable housing inventory is presumed to be part of a large, dedicated apartment complex. It is unreasonable to assume that the largest sites will be developed at 100% affordable without identifying funding sources for the subsidies required for this type of development. Recent 100% affordable projects completed in Berkeley have been 34 units (Jordan Court) and 44 units (2012 Berkeley Way), which we believe more accurately predicts what types of 100% affordable projects are feasible. In addition, several of these larger proposed projects (055 182301101, 056 193300602, 057 203000100, 058 212800301) were included in the previous housing element. These and all other non-vacant Opportunity Sites that were included in the previous housing element must be rezoned within three years to include 20% affordable housing by-right at specified densities.⁸

Without a better methodology to identify sites that are truly “feasible” and “available” to build housing at different income levels, Berkeley’s Housing Element will only be an empty gesture and will not lead to housing that actually gets built.

⁸ <https://www.hcd.ca.gov/inventory-of-suitable-land>

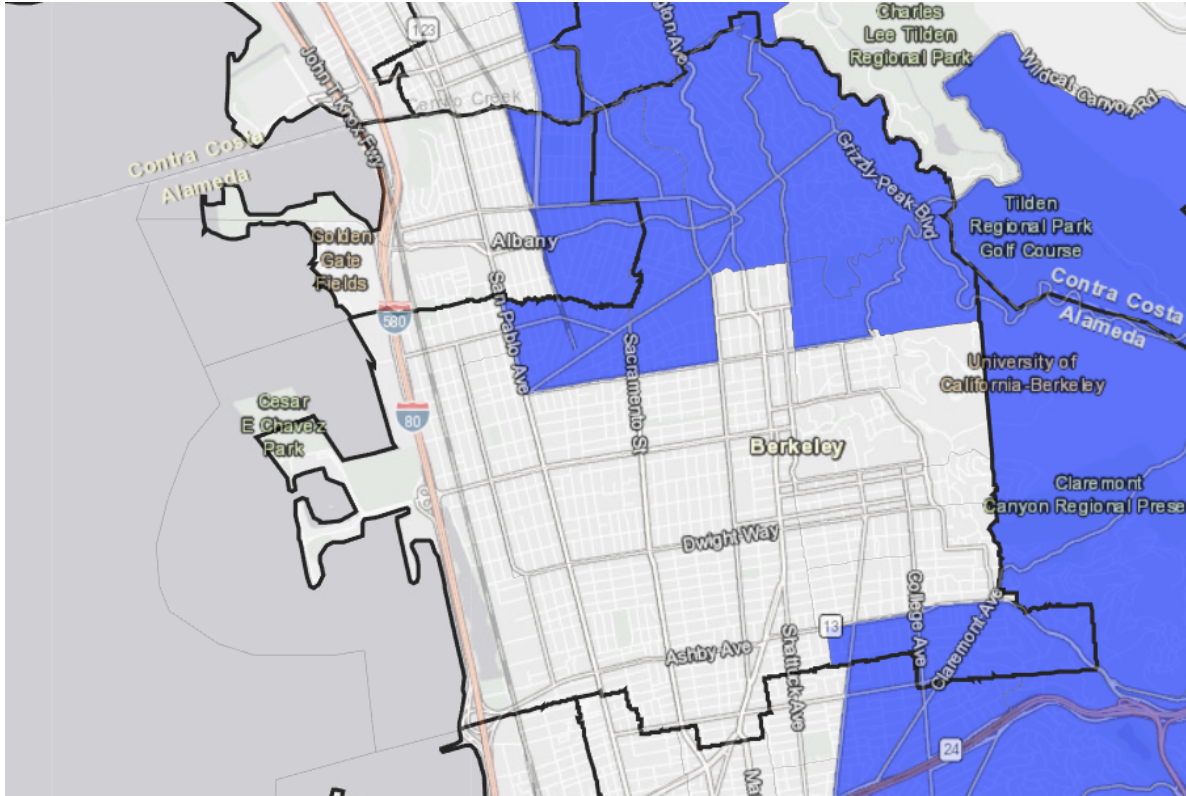
Other Priorities

a. Neighborhood Rezoning, Especially Near Transit

North Berkeley, Ashby, and Downtown Berkeley neighborhoods, which are all well-served by transit, should look drastically different by 2031 to fulfill Berkeley's vision of a walkable, bikeable, transit-oriented city. These transit-hub neighborhoods should be zoned to allow for mixed-use development, including several stories of housing above ground-floor commercial uses. It is especially important to focus on Transit-oriented development to help meet our climate goals to reduce driving, which is the largest contributor to greenhouse gasses and poor air quality among all uses in Berkeley.

We are disappointed to see that Berkeley has not considered rezoning in North Berkeley in its draft Housing Element apart from “HP-22 Middle Housing” that may or may not result in some two to four-unit infill development, depending on the severity of restrictions imposed by design standards. While Berkeley has committed to building housing at the site of the North Berkeley BART station on BART property, it has failed to contemplate rezoning the land surrounding this transit hub that is now exclusively zoned R-1 and R-2.⁹ Given its proximity to transit and location in a high-opportunity area, all parcels within a 15-minute walk of North Berkeley BART should allow for a mix of commercial and residential uses with several stories of housing allowed above ground-floor retail. Rezoning land within this radius of NBB will also help Berkeley meet its goals to affirmatively further fair housing, as described above. North Berkeley is a Racially Concentrated Areas of Affluence according to HCD (see map below). Because the planned development at NBB station will likely include buildings between 7-10 stories in height, maintaining single-family residential zoning in the adjacent neighborhood would be completely out of character with the new BART housing.

⁹ <https://berkeley.municipal.codes/BMC/OfficialZoningMap>



HCD's "Racially Concentrated Areas of Affluence" zones in Berkeley are in blue.

To better reflect the City's values, we encourage Berkeley to get rid of the single-family and low-multi-family zoning categories (R-1, R-1A, R-2, R-2A) altogether. These zoning designations were explicitly designed to exclude people of color from living where they apply. These anachronistic policies reflect a racist legacy and have no place in a city that prides itself on inclusivity. They should be replaced by a baseline zone that allows for several stories of residential housing above small-scale commercial or retail uses. Mixed-use development was originally allowed by-right in all Berkeley neighborhoods, which gave us many corner stores that would be illegal to build today. Today, these neighborhood stores provide essential goods within walking distance of thousands of residents, despite being a nonconforming use. We should allow them again in all Berkeley neighborhoods.

b. Automobile Reduction and Active Transport Improvements

To achieve consistency with the City's Vision Zero, Pedestrian and Bicycle Plans and to promote alternative modes of transportation, the Housing Element should require and incentivize building housing that is accessible without private automobiles with an overall goal to reduce the amount of residential parking spaces over time. Berkeley should consider whether to require that 10-20% of newly built parking spaces be reserved for car-sharing vehicles such as Zipcar and Gig Car, which are proven to reduce the need for private car

ownership.¹⁰ To ensure that new residential developments do not contain excessive parking, Berkeley should consider implementing a tax on new parking spaces to account for the negative pollution, noise, and safety impacts that private automobiles impose on our community, with revenues used to fund transit and safety improvements. Developments that include more parking should be required to contribute more to efforts that improve the experience of people outside of cars. Berkeley has also recently adopted a parking reform package which may include “unbundling” of parking fees from the cost of housing.¹¹ We urge the City to strengthen this policy.

Many sites in the Housing Element are placed on high-traffic corridors which have high rates of pedestrian injuries and fatalities. If these corridors are going to add thousands of new residents we would like to know how they will be made safer for people outside of cars. Developers could be required to make improvements to the pedestrian right-of-way (ROW) alongside newly built housing. For example, the City of Emeryville required the developer of The Emery (4510 Hubbard Street) to expand the pedestrian ROW on 45th St west of Horton through the owner’s parcel, thus increasing network connectivity. Other ideas include requiring developers to expand sidewalks abutting their property; requirements for traffic calming and additional crosswalks near new housing to accommodate expected increases in pedestrian traffic; or general requirements to implement the Pedestrian/Bike/Vision Zero Plan elements alongside a proposed development.

Signed,

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¹⁰ <https://www.mdpi.com/2071-1050/13/13/7384/pdf?version=1625141374>

¹¹ <https://berkeley.municipal.codes/BMC/23.322.060> 23.322.060 B