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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. Here is our comment on section 3.3, Governmental Constraints.

### Summary

- High mandatory minimum parking requirements (1.5 spaces/1bd, 2 spaces/2bd) raise the cost of building housing, increase traffic and pollution, and reduce viability of ground floor retail. Many recent applications have used density bonus laws or concessions to waive parking minimums. While Walnut Creek states they are studying reductions, the City does not make any concrete commitments to reducing parking requirements in the draft Element.
- Walnut Creek indicates it subjects all projects to design review and can condition approval based on lower density, which facially violates the "objective plan and zoning standards" criteria of the Housing Accountability Act.
- Walnut Creek does not comply with statutory deadlines in CEQA and Permit Streamlining Act law.

### Parking

Parking requirements increase the cost of housing, discourage the use of walking, cycling, and public transit, and increase traffic and pollution on our roads. We are encouraged that Walnut Creek is studying reduced parking minimums but are concerned that the scope of changes to parking minimums is left unspecified - it could be substantial or it could be nothing. Please commit to adopting reduced parking minimums as part of the Housing Element draft.

Walnut Creek's conversations with Affordable Housing developers<sup>1</sup> indicate that both parking and height limits are significant barriers to provisioning of affordable housing in Walnut Creek. The suggested programs include:

- Removing parking minimums for 100% affordable developments.
- Changing parking minimums to parking maximums.

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<sup>1</sup> Appendix A, pages 224-225, "Affordable Housing Developer Stakeholder Meeting"

We support both of these policies.

Please include an analysis of how many parking spaces were constructed in recent developments to help determine whether parking minimums are a constraint. For example, if developers are asking for a parking concession, or repeatedly building the minimum required amount of parking, this would be evidence that parking minimums are too high.

### **Timelines and Permit Procedures**

In table 3-15, Walnut Creek describes timelines for various entitlement pathways. The data is presented in a form that lacks statistical usefulness and that imply violations of state housing law. As an example, the “typical processing time” (based on working days) for a CUP is listed as “16-24 weeks.” However, it is unknown if this date range captures all CUP applications, 90% of CUP applications, or some other fraction of CUP applications. There is no information about the distribution of outcomes within that “typical processing time.” Moreover, the combination of deadlines in state law for a CEQA-exempt project is shorter than 24 weeks. Walnut Creek’s housing element should be revised to provide statistically-useful information including median processing time with a listed standard deviation, as well as identifying the time needed to get 95% of permits completed.

Additionally, Walnut Creek does not clearly break down the timelines by application phase. State housing law regulations break out timelines into three distinct phases, including Permit Streamlining Act completeness, CEQA (with multiple sub-deadlines depending on CEQA pathway), and finally Permit Streamlining Act approval. Without having information on timeline by application phase, it is impossible for third party advocates or the state to meaningfully analyze the City’s timelines and permit procedures for compliance with state housing law, or their impact as a constraint on development

### **Routine Non-Compliance with CEQA Law - PRC 21080.1 and 21080.2**

Walnut Creek’s housing element does not adequately discuss their procedures for determining what level of environmental review is required pursuant to PRC 21080.1 and 21080.2. During negotiations between a pro-bono attorney representing a developer of CEQA-exempt townhomes at 1394 Walden Road, the City Attorney Claire Lai provided this description of Walnut Creek’s procedures for determining the appropriate level of environmental review:

*“City staff assesses and makes the recommendation on CEQA applicability and the final decision-making body makes the CEQA determination at the time of project approval. The staff assessment and recommendation become a part of the record for the final decision-making body to consider.”*

The City Attorney admitted that Walnut Creek is not operating in compliance with PRC 21080.2, which requires the lead agency (the final decision-making body) to issue a determination of the

appropriate level of environmental review within 30 days of completeness. The lead agency is identified in table 3-14 of the draft Housing Element, where the “lead agency” is listed as the “approving body.” Should Walnut Creek assert that staff has been delegated authority by the lead agency to issue the CEQA determination required by PRC 21080.1, the Housing Element should explicitly concede that such staff determinations serve as determinations of the lead agency for the purposes of the Permit Streamlining Act.

Walnut Creek’s interpretation of CEQA timelines mirrors that of Berkeley, which HCD indicated to be violations of state housing law in a technical assistance letter dated June 3, 2022.<sup>2</sup>

The timely issuance of this CEQA determination is critical, as it triggers further deadlines in state law such as the PSA’s 60-day deadline for approving CEQA-exempt housing. Walnut Creek’s failure to follow this law creates an unreasonable constraint against development. The Housing Element should be amended to discuss the procedures for determining what level of environmental review is required, and how those procedures comply with the requirements of PRC 21080.1 and 21080.2.

### **SB 9**

The Constraints section does not discuss Walnut Creek’s SB 9 Emergency Ordinance. After state law changed to allow lot splits and duplexes in single family zones, Walnut Creek passed one of the most restrictive implementations in the state, limiting new duplexes to 800 square feet, the minimum under state law, and requiring a parking space in a garage for each unit.

Your author has evaluated the feasibility of purchasing a home and doing a lot split in Walnut Creek’s single family zones, and concluded the requirement to include a garage for each unit and a maximum of 800 square feet of living space makes this financially infeasible.

While Walnut Creek does not claim any SB 9 units toward its RHNA allocation, the rules Walnut Creek has adopted serve as a constraint on new development. The adoption of standards for SB 9 development that are more restrictive than the base zoning is also counter to HCD guidance on lawful implementation of SB 9.

### **Fees**

Walnut Creek requires 2 parking spaces for 2 bedroom apartments in multifamily, but also charges \$3749 per PM peak hour trip. These policies work at cross ends; the parking minimums drive up the cost of development and encourage driving, only to turn around and charge developers extra money for the parking that they are required to provide. If the goal is to reduce trips, Walnut Creek should:

- eliminate minimum parking requirements in multifamily development, so developers build only what’s required

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<sup>2</sup> See [spreadsheet of HCD enforcement letters issued](#), look for Berkeley.

- require a monthly fee for parking spaces - no "free parking"
- increase the price of onstreet parking
- Offer subsidies for transit passes or secure bike parking or purchasing an e-bike.
- Consider increasing the PM trip fee or offering rebates if apartments generate lower than the projected number of car trips in subsequent years.

We are glad that Walnut Creek's per-unit fees are lower for multifamily developments than single family developments.

### **Setbacks**

Please consider reducing mandatory front setbacks. Walnut Creek gets very hot in the summer and unshaded sidewalks increase the risk of heat stroke and discourage walking.

### **Planned Development Permits**

Planned Development Permits require findings that uses are "compatible with the site and its environs" (page 3-42, main doc). The word "compatible" could be read widely to include issues like height or density. The Housing Accountability Act limits discretion in approving housing permits to a failure to comply with "objective plan and zoning standards." As such "compatibility" should be refined to specify it only applies to objective plan and zoning standard compliance.

### **Design Review**

The Housing Accountability Act requires approval of "housing development projects" that do not pose a public health risk and comply with "objective general plan and zoning standards."

It is illegal to require changes to a project that reduce its density for subjective reasons, or specifically, it would be illegal to deny an application that refused to go along with Walnut Creek's request to lower density for subjective reasons.<sup>3</sup> **We are extremely concerned by language in the draft Housing Element that indicates Walnut Creek routinely conditions approval of projects on a lower density for subjective reasons.**

While it may be illegal to deny a project for subjective reasons, developers may still go along with Walnut Creek's subjective requests for lower density to stay in the City's good graces and maintain good relations with City Hall. This concerns us as proponents of dense infill housing and it should concern HCD.

Walnut Creek should amend its Design Review guidelines to make clear that requests for a lower density, and design changes that do not relate to an objective standard in the zoning code, are optional for *all* "housing development projects," not just projects that apply for streamlining.

Furthermore, we recommend that Walnut Creek adopt objective & ministerial approval processes for all housing developments not requiring a zoning change or General Plan amendment. This

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<sup>3</sup> See *Seqoyah Hills Homeowners Association vs. City of Oakland*, 1993.

would help avoid by far the most time consuming stage of development review identified by Walnut Creek, CEQA review & EIR preparation (9-12 months, while all other stages of review are measured in weeks), for developments consistent with the planning work & environmental review Walnut Creek has already completed for its General Plan.d

### **Emergency Shelters**

We are grateful for the discussion of emergency shelters. Given that Walnut Creek has granted a conditional use permit to the Trinity Center for 6 years in a row, the City should consider allowing emergency shelter on this site without a conditional use. It would be a big loss for the community if Walnut Creek were to fail to grant the permit, and permitting use by-right on this site would help insulate this extremely valuable community facility against changes in the political climate.

We are also concerned that Walnut Creek includes the Trinity Center's Emergency Shelter site on its Sites Inventory, where it is planned to become 61 market-rate apartments by 2031. Walnut Creek should identify a separate shelter site or remove this site from the inventory.