



October 14, 2022

Director William Gilchrist
Department of Planning and Building
City of Oakland
350 Frank Ogawa Plaza
Oakland, CA 94610

RE: Preliminary Zoning Proposals - Draft Housing Element 6th Cycle (2023-2031)

Dear Director Gilchrist,

We write to provide comments on Oakland's Preliminary Zoning Proposals (Proposals) as part of the Draft Housing Element for the 6th Planning Cycle (2023 - 2031). We welcome the power and extent of the proposed Affordable Housing Overlay. However, we have identified significant issues with the missing middle program, the sites identified to affirmatively further fair housing in Rockridge and elsewhere, commercial corridor rezonings, and the continued non-inclusion of promising, underutilized sites in low-VMT and high-resource tracts.

In terms of process, we notice Oakland identifies key feedback from community outreach for the general plan and housing element updates at the start of the proposals, but it is unclear how or where this feedback is reflected in the respective rezoning parts of the Proposals, or even whether they all represent suggestions the city has opted to take up. Please consider revising the Proposals to clearly identify how the key feedback is connected to and accomplished in the rezonings.

We summarize our comments as follows:

1. Revise the Missing Middle Program to ensure high-resource neighborhoods allow four units on most lots in practice, including providing setback relief and reducing/eliminating off-street parking minimums.

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2. The proposed Rockridge rezoning sites have significant issues related to feasibility, equity and displacement risk; zoning a wider swath of land rather than picking a handful of sites would be more effective.
3. Choosing to leave in place current heights in Rockridge along College Avenue and Claremont Avenue, while miles of MacArthur Boulevard and International Boulevard in East Oakland are rezoned to allow significantly more height and development, is reinforcing patterns of spatial segregation. Oakland needs to be more ambitious with North Oakland standards to affirmatively further fair housing as required by state law.
4. Oakland should undo the 2011 downzoning along the high and moderate-resource Shattuck Avenue commercial corridor and increase heights to 45'.
5. We make various suggestions to improve the proposed Affordable Housing Overlay, including removing the exemption for height bonuses for prospective Areas of Primary Importance that are formed after the effective date of the rezoning.

Missing Middle Program

The proposed Missing Middle Program, while making some noteworthy changes, overall does not go far enough to meet the goals of the Missing Middle referral from CM Rebecca Kaplan and the Oakland City Council. In certain instances, *Oakland's draft Missing Middle Program represents a downzoning from the SB9 development capacity.*

Currently 2-4 units is the baseline set by state housing law. Oakland should be pursuing a framework that allows **more** than that baseline on a majority of single-family lots. Staff's proposal provides greater certainty by removing conditional use permits for residential zones, but does not provide sufficient density and development-standard relief for these opportunities to be reliable and straightforward - a necessity for any significant use of the opportunities. Few projects will be able to take advantage of a by-right process because density limits for standard lot sizes of 4,000-6,000 square feet are still too low. Furthermore, unchanged setbacks, especially the 15' front and rear setbacks in most zones, severely constrains the feasibility of 3- and 4-unit developments.

We believe this program can be revised to facilitate the production of attainable and affordable middle housing. We recommend Oakland consider the following:

- **Sixplexes:** Sixplexes are more likely to be both feasible in the context of high land values and produce middle income housing ([see study from San Jose](#); attached as Exhibit A). Consider allowing up to six units by right in certain high-opportunity residential zones, as well as on corner lots and lots over 5,000 square feet.
- **Minimum Lot Sizes and Lot Splits:**
 - Please confirm explicitly that lot splits in residential zones will be approved ministerially.

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- The minimum lot size in residential zones should be reduced from 2,500 to 2,000 square feet. Under SB9 the minimum lot size post-split is 1,200 square feet. While we appreciate Oakland reducing minimum lot sizes across residential zones, the 2,500 square foot minimum is twice that of the SB9 baseline. Moreover, 4,000 square feet is a common Oakland lot size, perhaps the most common. A 2,000 square foot minimum lot size would facilitate lot splits in most cases, whereas a 2,500 square foot minimum would largely exclude them. *As it stands, the proposed minimum lot sizes constitute a downzoning of development capacity in residential zones from SB9 and should be revised.*
- Lower Rockridge and Temescal:
 - To ensure Lower Rockridge and Temescal allow fourplexes in practice, consider rezoning them to RM-4. Lower Rockridge and Temescal typical lots are roughly 4,000 square feet. The proposed rezoning of these high-resource and low-VMT areas requires 1,500 square feet of land per unit. In practice this means only 2 units are allowed, which is the bare minimum under SB9. Moreover, 2 units does not meet the goals of Oakland City Council to allow at least 4 units in residential zones, and reduces owner incentives to add those units (these projects will often be complex and expensive). Rezoning these areas to RM-4 would require 1,000 square feet of land per unit, which would allow 4 units per lot by right in most or all cases.
- Adams Point: The zoning map shows a rezoning of the center of Adams Point from RM-1 to RM-2. This neighborhood is already full of medium-sized apartment buildings (see Figure 1 below, taken from the Oakland Map Atlas) These zoned capacity should match the existing built environment to allow for 4-8 story apartments. Alternatively, consider rezoning this area to RM-4.
- High Resource Areas: Bushrod, Santa Fe, Trestle Glen, Crocker Highlands are all high-resource or moderate-resource areas that are untouched by the proposed Missing Middle Program rezonings. These are also low-VMT neighborhoods with easy non-car access to jobs, parks and schools. They should be rezoned to at least RM-2. (Also in Figure 1 below).
- Heights: RM-1 should allow 3 stories by right.
- Parking: The current requirement of 1 unit of off-street parking requirement in most Oakland greater than ½ mile from transit makes most missing middle projects infeasible. The off-street parking requirements should be fully eliminated. Alternatively, the city could match the California ADU standard by eliminating off-street parking requirements within one (1) mile of any bus stop, but if so should require no more than 0.5 spaces per unit elsewhere.
- Setbacks:
 - As written, the Missing Middle Program offers no reduction in setbacks. As we have seen in Minneapolis and other places the failure to reduce lot coverage and setback rules in tandem with upzoning for 2-4 units will result in few to any construction. The existing RM front setback of 15-20' is a nonstarter for middle housing development.

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- Consider reducing RM setbacks to 10' for front setbacks (or average of immediately adjacent neighboring buildings, whichever is less), 4' on all sides, and 0' for inner side or street side on lots less than 50' wide.
- Increase lot coverage to allow 50% lot coverage in all residential zones for projects seeking 3 or more units.
- Some zones have not only minimum lot area but minimum average width and minimum frontage. Those should be reduced in tandem with minimum lot areas.
- High-resource/Low-VMT gradation:
 - In order to reduce patterns of spatial segregation, Oakland should make special effort to ensure that 2-4 unit development is feasible in high-resource residential neighborhoods. The high land values of these neighborhoods also makes it harder for 2-4 residential uses to outbid luxury single-family homes. Therefore, we have previously written to Oakland suggesting that additional density beyond 4 units and additional setback relief be offered in high-resource areas. The proposed Missing Middle Program makes no effort in that regard. We recommend Oakland revise the program to confer additional density (baseline 5 units) and additional setback relief in high-resource residential zones.
 - In order to reduce VMT, Oakland should allow additional density and setback relief in residential zones near BART stations.
- Mills College:
 - Please clarify the reasoning behind rezoning Mills College at Northeastern University from RM-3 to RM-4. Plans for student housing on the actual Mills site should be tailored to student housing; RM-4 is a residential neighborhood standard. Without additional context, this appears to be a paper upzoning that will result in no new housing.
- Accessory Commercial Units:
 - The Proposals' key points from community engagement cites the need to attract retailers in food deserts. In many Oakland neighborhoods, especially East Oakland, the distance between commercial corridors where retail uses are permitted exceeds easy walking distance. Moreover commercial floor plates are often too big or expensive for many start-up or would-be retailers.
 - All RM zones in the current intent section include "and neighborhood businesses where appropriate", but in practice all subzones except RM-5 make food sales, restaurants, cafes, and retail sales require conditional use approval, and alcohol sales are only allowed if grandfathered. Consider allowing a wider range of commercial businesses as permitted in any space less than 600 square feet in all RM and RU zones ("Accessory Commercial Units") to facilitate greater food access, increased walkability and low impact diversity of uses.

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Rockridge Rezonings

We appreciate that Oakland's Proposals include specific rezoning for Rockridge in response to our comments and those of HCD. Unfortunately, as discussed below, the rezonings as written have significant issues in terms of spatial equity, horizontal equity, feasibility and displacement. We are also concerned that staff continue to avoid rezoning soft sites near Rockridge BART that could easily be rezoned to further fair housing and reduce VMT.

- Commercial Corridor:
 - As noted below, commercial corridors throughout West and East Oakland are having their heights increased. These include commercial corridors close to BART and high-frequency bus (Fruitvale, West Oakland, Coliseum, and Telegraph Avenue near MacArthur BART) as well as on BRT lines (International Boulevard in San Antonio and between 73rd Avenue and Durant Avenue) and also some corridors miles from BART (Dimond District and Laurel District). All the while, heights for the commercial corridor of College Avenue near Rockridge BART remain untouched at 35' in CN-1 zones.
 - While Oakland proposes to rezone eight sites along College Avenue and Claremont Avenue, there are significant issues with many of these sites (see below). Moreover, it is concerning that Oakland seems perfectly willing to increase heights along miles of MacArthur and International boulevards but cannot countenance allowing more than two parcels to go up to 65' on College Avenue.
 - While we support height increases in commercial corridors generally, we are concerned about the horizontal inequity of excluding College Avenue and Claremont Avenue. Why should a strong commercial corridor in the Laurel District, over 2 miles from Fruitvale BART, be rezoned from 35' to 65', while College Avenue, within ½ mile of Rockridge BART, remains at 35'? Why should commercial land in Deep East Oakland in Elmhurst along International Boulevard go from 75' to 95' while Claremont Avenue near Rockridge is stuck at 35'? Are the existing commercial uses in Rockridge simply more valuable to Oakland than the existing commercial uses in East Oakland?
 - ***This concentration of multifamily development potential in lower income and non-white neighborhoods, especially in East Oakland, while preserving the height limits of commercial land in high-income and mostly white Rockridge is reinforcing, not reversing, existing patterns of spatial segregation.***
 - Oakland, in order to affirmatively further fair housing, should increase heights along College Avenue and Claremont Avenue to 55'.
- RM Zoning: As noted above, Lower Rockridge needs to go from RM-2 to RM-4 in order to allow for 3- or 4-unit development to occur - or the entire RM zone needs to allow 3- or 4-unit development both by right and in practice.
- DMV: Does Oakland have written confirmation that DMV plans to redevelop its property on Claremont? The use of state-owned land for redevelopment must be accompanied by a

firm commitment by the Department of General Services to redevelop the site within the eight year planning period.

- 5248 Claremont Avenue: Site 5 on Figure 4 is a 3-story, 42-unit apartment building constructed in 1959 called Claremont Park Apartments. It is highly likely that this property is subject to Oakland's rent control ordinance. In any case, this property should not be rezoned. ***If it remains as a rezoning site either: 1) no redevelopment will occur due to the costs associated with SB330/SB8 replacement, relocation and right to return requirements; or 2) redevelopment will occur and 42 units of rent-controlled housing will be destroyed when vacant, commercial and owner-occupied sites abound nearby. Oakland should not be in the business of designating rent-controlled housing in high-resource areas for upzoning and redevelopment.*** Please remove this site.
- Trader Joe's parking lot: This is a high-volume grocery store with two surface parking lots. It is highly unlikely either the store itself or the parking lot fronting College Avenue will be redeveloped. The Miles Avenue fronted surface parking lot may be feasible for redevelopment, but it will be difficult given that the CN-1 standards only permit approximately 40 units.
- 5264 Claremont and 5256 Claremont: These sites include approximately four residential units. Under the CN-1 density standards and unchanged 35' height limit these sites could yield 9 units at most each. If there are existing low-income tenants on-site then 1 or 2 of 9 units will be required to be replaced with deed-restricted units. Does Oakland have a track record of producing developments with less than 10 units and on-site affordable housing in this manner? If not, they should be considered for higher density or removed.
- 6209 College: This site has an existing banking use and surface parking lot. Under the CN-1 standards it can yield at best 20 units. It is unlikely that 42 dwelling units per acre will outbid the existing banking use.
- 5220 Claremont: This site has an existing pediatric use that is part of UCSF Benioff Hospital. Has Oakland obtained written evidence that the property owner intends to discontinue this use within the eight year planning period?
- Unpicked Sites: As seen above, there are significant issues with Oakland's Rockridge rezoning sites. There are many sites that Oakland could identify for rezoning that would be more feasible for housing while minimizing displacement.
 - The vacant site at Pleasant Valley/51st Street and Broadway - This is a large vacant site near BART and Lines 51A and 18. It is in a high-resource tract and has easy access to health services, grocery stores and open space.
 - Claremont flatiron - This vacant parcel at Claremont and College is currently zoned to only allow 18 units. It was also a very popular site in the city's survey data. Consider rezoning to allow 75 dwelling units per acre.
 - Gas Stations - There are several gas stations that could be rezoned within Rockridge.
 - 51st Street - This is a 75' wide residential street with bus service and is within a ½ mile of Rockridge BART. It is proposed to be rezoned to RM-2. It should be rezoned to allow for multifamily housing with heights of 45' and up to 55 dwelling units per

- acre. The existing uses of mostly owner-occupied single family homes and a few duplexes would reduce the impacts of potential displacement and relocation costs.
- In practice, most development usually occurs in places outside those designated in housing elements, because for- and non-profit developers evaluate prospects in different ways from planning professionals and often come to different conclusions. In addition to trying to pick winners among sites, the city should consider a broader upzoning to 6+ stories and 75+ units per acre in a one-mile radius of Rockridge BART.

Commercial Corridors

We understand that many of Oakland's proposed commercial corridor rezonings are meant to reconcile planning code with building typologies. In addition, the Proposals increase heights in commercial corridors in several key areas near transit (excluding College Avenue and Claremont Avenue in Rockridge). While these heights increases are certainly helpful for increasing housing feasibility and lowering VMT we are concerned about the lack of height increases in key areas.

- **Park Boulevard**: Heights along the commercial sections of Park Boulevard in Eastlake and Glenview should be increased.
- **Shattuck Avenue**:
 - This section was downzoned in 2011 to 35' in response to housing development in the mid-2000s. Homeowners in these high-resource areas pushed to downzone the corridor due to concerns about development exceeding existing zoning (through use of State Density Bonus Law) but within the general plan designations; the groups supporting the downzoning cited impacts to "sunlight, privacy and appearance." [[Oakland Planning Commission staff report, July 14, 2010](#); attached as Exhibit B]. This was a poor justification for downzoning a high-resource, low-VMT transit corridor and should be undone.
 - In February 2021 a 45' multifamily development project at 6501 Shattuck Avenue (½ mile from Ashby BART) that had submitted an application prior to the 2011 35' downzoning was appealed and delayed for months by nearby homeowners and landlords. The appeal was ultimately rejected but such appeals add risk and cost to housing development.
 - Recently, a proposal was submitted for an apartment building at 6341 Shattuck Avenue. Consistent with the zoning, it is limited to 3 stories; allowing 4 stories would likely enable a 30-40% increase in new homes built.
 - Consider increasing heights along Shattuck Avenue back to 45' or more to facilitate housing development in this high-resource and low-VMT neighborhood.

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Affordable Housing Overlay

Overall we are highly encouraged by the Affordable Housing Overlay (AHO) proposal. We believe it has the potential to open up more residential land for affordable housing development, including in high-resource areas. The by-right provisions of this rezoning program can provide needed greater certainty to affordable housing developers. The AHO, if implemented with care, can deliver more low and moderate income housing and help reverse patterns of spatial segregation.

We offer the following suggestions:

- Co-ops and CLTs: Make sure the ordinance explicitly allows co-ops and land trusts to use the AHO.
- Relax open space requirements: convert open space per unit into open space per residential living space, so that more density does not penalize them in terms of open space requirements. For further context, the CN zone already has lower requirements for efficiency units but residential zones do not.
- Cohousing: Allow cohousing with shared bathrooms and shared kitchens.
- Historic Districts: Not allowing +20ft height in historic areas, aka Areas of Primary Importance (APIs), is inequitable. Some of the high-resource areas affected include most of the rectangle between Alcatraz, Woolsey, College, & Telegraph; as well as the entire CCA site at 5200 Broadway. A historical building is *not* demeaned or diminished by having a taller building next to it.
 - We strongly request that Oakland does not allow newly formed, prospective APIs at the effective date of the rezoning to be exempted from AHO height bonuses.
- Roof Heights: Many zones like RM currently allow 5 feet more roof height than wall height to allow for pitched roofs. But when this proposal adds 20 feet that +5 feet often vanishes. What is the rationale for this? Pitched roofs can work in taller buildings too. Consider allowing +5 feet for pitched roof in every AHO zoning category.
- DBL Consistency: Clarify the meaning of 100% affordable in terms of income levels that the units must be restricted to. At a minimum, 100% affordable projects under the definition of State Density Bonus Law (AB1763), which are defined as 20% moderate-income, 80% extremely, very low or low-income, and one manager's unit, should qualify under the city AHO. Additionally, the city could consider allowing more than 20% of units to be moderate-income-restricted to open more options.
- Parking: Off-street parking requirements represent significant hard costs and opportunity costs for low-income housing. Parking requirements are a binding constraint on development of multifamily housing that reduces site viability. AB2097 and other state bills have reduced parking requirements within ½ mile of transit and in low-VMT areas. Oakland should go further and require no off-street parking for AHO projects anywhere.
- Fire Zones: The Very High Fire Severity Zones (VHFSZs) are exempted from the AHO. While there are valid safety concerns related to fire risk and escape we would be remiss not to point out the inequity of exempting high-resource and historically exclusionary

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VHFSZs. Oakland should explore allowing AHO projects in VHFSZs with hardening and other mitigations.

Thank you for considering these comments. We are available to discuss them via phone or video conference, if necessary.

Sincerely,

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EB4E Co-Executives

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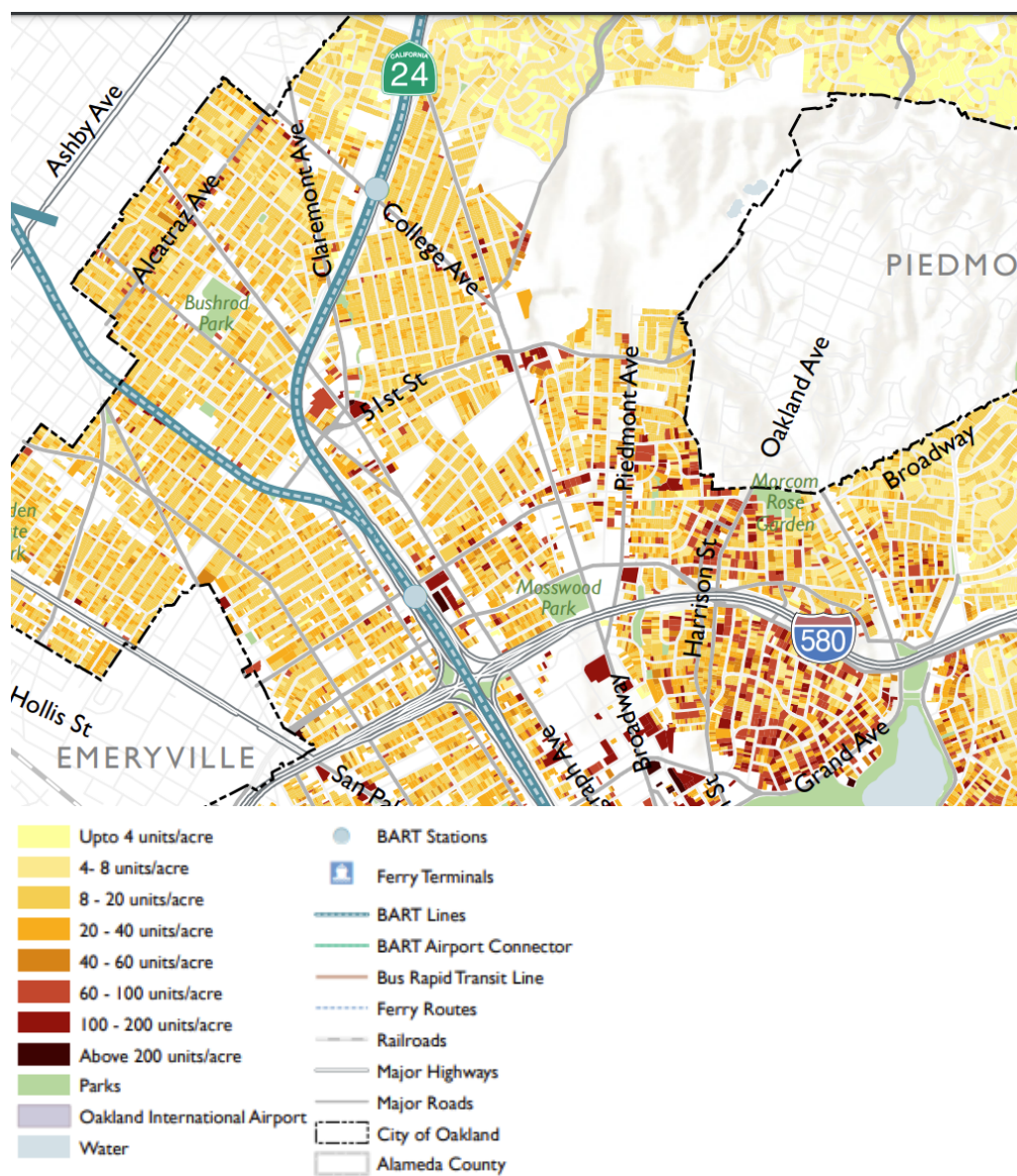
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cc:
CA Department of Housing and Community Development

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Figure 1: Existing Residential Density, Central and North Oakland Inset (from Oakland Map Atlas, Figure 2-6)



The goal of this figure is to show that:

- the triangle of Adams Point in the lower right of the figure is already densely full of medium- and some large apartment buildings - the densest census tracts in Oakland outside downtown - yet is mostly zoned RM out of keeping with its current environment, and the proposed rezonings only move a small chunk of it up one level within RM. It should be a high-density zoning designation that allows the same buildings that exists now - not RM or even RU.
- Rockridge, Temescal, and other parts of North Oakland are nearly a single-family monoculture, while the proposed rezonings only increase the density in that large, high-opportunity by a small degree.