

EAST BAY FOR EVERYONE

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Honorable Members of the Walnut Creek City Council:

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. The new draft contains some improvements over the first draft, but is still inadequate for achieving compliance with state Housing Element law.

Summary of feedback

- Sites do not meet HCD guidelines for inclusion and will not lead to the production of 5800 homes.
- The programs added consist of fixes required by state law, education about state programs (SB 9), or extension of existing Walnut Creek programs, and do not loosen any of Walnut Creek's governmental constraints.
- We suggest several programs that would help preserve, improve or add to Walnut Creek's housing stock.

Lack of rezoning

Walnut Creek does not propose any rezoning and (as far as we can tell) includes the exact same sites in the second draft as the first. The RHNA targets require Walnut Creek to produce housing at a much higher rate than it has historically. Putting aside individual sites for a second, while the downtown core was rezoned in 2018 and 2019, we do not believe that those rezonings will produce the additional amount of housing required, especially considering the production in 2021 and 2022, the pipeline, and the current challenging development climate.

Further, while downtown is an appropriate location for dense housing, we would like to see additional opportunities for housing located throughout the community, including in single family zones, which make up a majority of Walnut Creek's land area.

Buffer

Walnut Creek has only a 12% buffer in its sites inventory which implies that every site must have an 89% chance of becoming housing in order to meet the target. Many of the sites in the inventory do not have this good of a chance of becoming housing.

Constraints

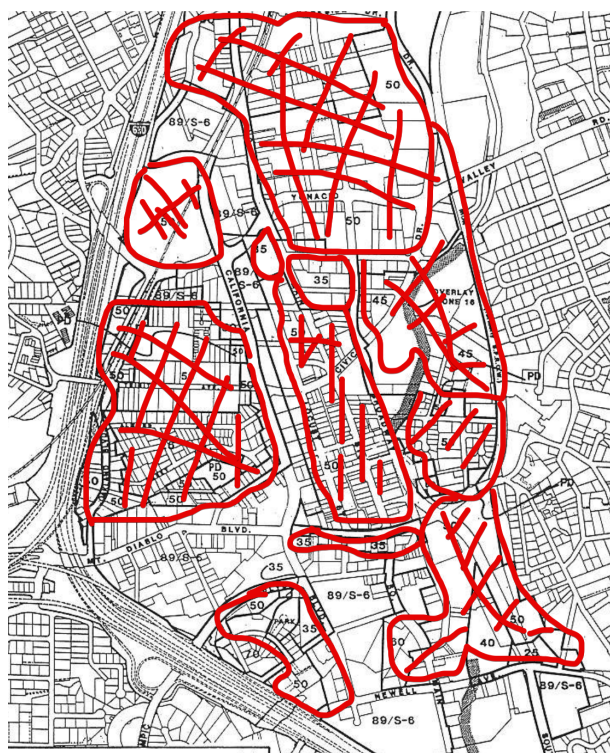
Trees

Walnut Creek requires payment into an in-lieu fund for removal of any tree considered “highly protected.” A developer who applied to replace a single family home with multifamily housing at 1394 Walden Road was required to pay \$20,000 to remove two trees.¹ The desire to preserve trees should be balanced against the increased demand for sprawl (and tree cuts) from failing to meet demand for housing in central Contra Costa County.

Walnut Creek did not include its tree ordinance in its list of fees or in the “Constraints” section.

Height limits

Walnut Creek describes Measure A as allowing height limits “up to 89 feet,” but this misleads because height limits are set lower than 89 feet, often 35/50 feet, in most of downtown. We believe the red areas have a height limit lower than 89 feet. After discussion with staff, it is possible that some of these have since been lifted to 89 feet but our understanding is most of the highlighted zones still have 35/50 foot height limits.



Walnut Creek says height limits are not a constraint because developers who want to exceed height limits can use a density bonus to achieve those. The point of the density bonus is that it is a

¹ https://walnutcreek.granicus.com/MetaViewer.php?view_id=12&clip_id=4464&meta_id=264366

bonus, in exchange for the developer making concessions with respect to affordability. A developer who wants to use Walnut Creek's baseline zoning standards cannot exceed the baseline height.

HCD guidelines explicitly say the baseline zoning should be used to determine whether zoning is feasible.²

The analysis of "appropriate zoning" should not include residential buildout projections resulting from the implementation of a jurisdiction's inclusionary program or potential increase in density due to a density bonus, because these tools are not a substitute for addressing whether the underlining (base) zoning densities are appropriate to accommodate the RHNA for lower income households.

Suitability of Nonvacant Sites

The December 2022 HCD determination letter says:

the housing element must describe "substantial evidence" that the existing use does not constitute an impediment for additional residential use on the site. 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.

Walnut Creek does not provide substantial evidence that the use will discontinue for many sites. For a full list of concerns about sites, please see [our last letter on Walnut Creek's site inventory](#). We provide some examples here:

Owner told us they have no interest in discontinuing existing use

Site 112: Walnut Creek says this site is vacant but it is not; it is owned by Contra Costa Flood Control & Water Conservation District who told us in an email they have no plans to discontinue the existing use, which is as a staging area for creek maintenance. At the time of writing Walnut Creek is in the midst of a historic rain period which has seen substantial flooding and intense creek activity. There is zero chance this site becomes housing.

Site 116: Owned by a church whose pastor told us in a phone call there is no chance they will add two single family homes on this parcel - they would maybe do tiny homes, or nothing. Only access is via church parking lot.

Other sites we received evidence that the owners intend to preserve the existing use include sites 22, 68, 71, 74, and 101. None of these sites meet the state criteria for inclusion on a Sites Inventory.

² [June 2020 HCD Sites Inventory Memo](#)

Insufficient evidence replacement density pencils

Recently entitled projects in Walnut Creek have a high ratio of new units to existing units: Vaya (8.9 new units per old unit), Bonanza (7.5), 2670 Walnut (7), 1394 Walden (7), Riviera (7), Pioneer Village (6.3), Analisa (4), Homestead (3), Carmel Drive (2.83).³

The Sites Inventory repeatedly includes sites with existing tenants onsite and new-to-existing ratios lower than these. Walnut Creek says the assumptions are “conservative,” likely referring to the ability to use density bonuses, but as HCD guidance points out, appropriate zoning is supposed to use the baseline zoning as the standard for feasibility, not the zoning with a bonus applied.

For sites like site 88 (Trinity Ave, narrow lot, 7 existing apartments to be replaced by 15 apartments, 2.14:1 ratio), the evidence provided by Walnut Creek is, “nearby examples of redevelopment.” But not only is the replacement ratio for this parcel lower than any on record, the same HCD memo explicitly says you’re not supposed to use generalized examples.

*However, the same finding for multiple sites in a specific area may not be appropriate if their characteristics widely vary. For example, nonvacant sites with differing existing uses and lacking in common ownership, whether contiguous or located in the same general area, may not rely on a generalized analysis. While the sites may be located in an area with common economic issues, individual owners may not wish to sell their property or redevelop their site with residential uses. In addition, each site’s existing use, e.g., grocery store, retail shop, parking lot, and offices, may have lease agreements of different lengths of time or the owner may not wish to relocate or redevelop the site with a more intensive residential use. In this type of situation, use of the same findings for the multiple sites would not be appropriate.*⁴

For Site 88, the most likely “nearby example” is the Acalanes Court Apartments at 1954 Trinity Ave. That lot is much more feasible for development because the frontage is more than twice as wide (115 feet vs. ~53 feet), which makes it much more able to accommodate Walnut Creek’s parking and egress requirements. It is not realistic to use it as a baseline for the much narrower parcel with more existing units.

Environmental constraints

Site 69: It does not make any sense that a developer would purchase the parcels on both sides of the creek which bisects this consolidated parcel. The shopping center on the north side is doing much better than on the south side and much less likely to discontinue the existing use; we count at least fifteen active leases.

Too high likelihood of development

³ “Riv” is described as 48 units replacing a “small” apartment building but the unit count is not given.

⁴ Page 28,

https://www.hcd.ca.gov/community-development/housing-element/docs/sites_inventory_memo_final06102020.pdf

Sites 35-44: In 1981, Walnut Creek rezoned 10-20 single family parcels on Shady Lane and Walden Road for multifamily housing. Only one has received an application to build multifamily housing in the last 8 years, but Walnut Creek assumes nine other parcels (Sites 35-44) will all become apartments this cycle. A more realistic feasibility calculation would assume one additional parcel would become an apartment, the same probability of development as the last cycle.

Site 89: A church representative said in an email, “The plot has significant problems for building, such as our church’s need for parking and the powerlines that cross the property.” While they also said “none of these issues are insurmountable,” we do not think there is an 85% chance this lot turns into housing by 2031. A more realistic likelihood of development would be 25%.⁵

Suggested Amendments to Sites Inventory

- Modify development standards to make development on existing sites more feasible using the baseline zoning.
- Remove sites where the owner has communicated they cannot or have no interest in adding apartments. Reduce feasibility on sites where new housing is unlikely or uncertain.
- Rezone other sites to make development more feasible and add them to the Sites Inventory:
 - Parcels that open onto the bike trail network or are located nearby.
 - Shadelands and nearby residential parcels.
 - Woodlands neighborhood including Citrus Marketplace.
 - Anywhere in the Northgate, Rancho Paraíso, or Ygnacio Valley neighborhoods which are unpolluted, high resource areas, contain about 40% of the city’s land area and are almost entirely exempt from new development right now.
- Add a missing middle program and use a development probability calculation (similar to ADU’s) to count these sites.

Policies and Programs

Here is a summary of Walnut Creek’s added or amended programs in its second draft:

- ADU education and progress monitoring.
- Apply for two grants a year (Walnut Creek currently exceeds this number, per staff)
- Maintain a list of parcels owned by faith groups.
- Maintain existing local density bonus.
- Adjust parking requirements
- Comply with existing state law.
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⁵ Either use 25% as the “Density Realism” figure, or take the number of units if the site was built at 100% of zoned capacity, multiply by 25%, then add that number of units to the RHNA total.

- Permanent SB 9 ordinance (see comments below).
- Education about SB 9.
- Add two currently-in-design bike lanes from the Bicycle Plan and continue implementing the Plan.

Apart from parking requirements (which could be satisfied with as little as a half space reduction in one unit size), *none of these programs loosen any of Walnut Creek's "governmental constraints."* We are pretty disappointed by this list.

SB 9

Walnut Creek has received one or two SB 9 applications.⁶ The Housing Element does not include any analysis of why that happened. The staff report prepared on November 1 to extend Walnut Creek's SB 9 urgency ordinance makes clear that the low number of proposals is by design; SB 9 could have resulted in two story buildings "inconsistent with many of the City's single family neighborhoods" and "represents a significant departure" from existing zoning rules.⁷

Walnut Creek's current ordinance bans ADU's on parcels that have been split, even though a single family home + ADU is a legal configuration under SB 9. From HCD's SB 9 fact sheet:

*When a lot split occurs, the local agency must allow up to two units on each lot resulting from the lot split. In this situation, all three unit types (i.e., primary unit, ADU, and Junior ADU) count toward this two-unit limit. For example, the limit could be reached on each lot by creating two primary units, **or a primary unit and an ADU** (our emphasis), or a primary unit and a Junior ADU.⁸*

Walnut Creek borders five different jurisdictions⁹ and has more restrictive SB 9 rules than all of them, notably, a maximum of 800 square feet per unit, a mandatory covered parking space, and an illegal ban on ADU's after a lot split.

The new program H-6.G promises to codify SB 9. This may be new in the second draft of the Housing Element, but it's not a new plan, since Walnut Creek's emergency ordinance will expire and the November 1 staff report indicated they were planning to bring a permanent ordinance.

This program and related program H-6.H do not say anything about what standards will be proposed in the permanent SB 9 ordinance, commit to a target number of units to be created under the program, or commit to adjust the program if it does not lead to the target. As written Walnut Creek could create zero SB 9 units over the duration of the 6th Cycle and still mark the program as a success.

⁶ As of January 17, per discussion with staff, who couldn't remember off hand if the second one was a pre-application or formal application.

⁷ https://walnutcreek.granicus.com/MetaViewer.php?view_id=12&event_id=2247&meta_id=276862

⁸ <https://www.hcd.ca.gov/docs/planning-and-community-development/sb9factsheet.pdf>

⁹ Alamo (in unincorporated Contra Costa), Lafayette, Pleasant Hill, Concord, and Clayton.

Bicycle plan

Walnut Creek adds a program to implement an existing bicycle plan. We appreciate the commitment to completing two specific routes, but remain a bit underwhelmed by a promise to fund an existing bicycle plan, especially since these routes are already in the design stage. If Walnut Creek failed to follow through here, we doubt HCD would find its Housing Element out of compliance.

Suggested Amendments to Existing Programs

SB 9

The SB 9 program should at minimum:

- Remove the illegal ban on ADU's after a lot split.
- Study why so few SB 9 units have been proposed in Walnut Creek. For example, Walnut Creek could survey homeowners on lots larger than ~8000 square feet about why they are not interested in the program.¹⁰
- Relax development standards to encourage use of the program, for example, permit 1200 square feet per unit and remove the requirement to provide off-street parking.
- Set a target number of units to produce by 2031.
- Commit to relaxing standards if ½ the target number of units is not met mid-cycle.

Parking requirements

We are glad Walnut Creek is committing to reducing parking minimums but it's not clear how big of reductions will be proposed, or whether these reductions will be tied to development feasibility or other criteria. Walnut Creek could for example commit to:

- Reduce parking minimums to a level that makes housing development feasible on sites in the Sites Inventory, instead of only to a level that meets resident demand for parking. (Walnut Creek will probably say this is achievable with density bonus waivers of parking minimums, but again, they are supposed to make the baseline zoning feasible, before bonuses are applied.)
- Imposing parking maximums downtown or removing parking minimums in areas covered by AB 2097.¹¹
- Commit to varying PM Peak Hour trip fees based on the number of parking spaces included and/or other variables. An apartment with zero parking spaces and one with 3 parking spaces per unit currently pay the same PM Peak Hour trip fees of \$3749 * 0.44 *

¹⁰ Disclosure, the author owns a large Walnut Creek single family lot and a relaxed SB 9 program could improve the value of this parcel. Our organization has made similar requests re: missing middle and SB 9 of every other jurisdiction in the East Bay.

¹¹ While this seems redundant, one reason to do this would be so an affordable housing developer who is relying on City or County funds does not feel compelled to add unnecessary parking in order to preserve access to their funding.

(number of units), which is not a realistic measure of how many car trips each building would generate.

Suggested Programs

Fee waivers for 100% affordable housing

A number of efforts to build 100% affordable housing in Walnut Creek involve building tiny homes on faith properties. Fees for this type of development are prohibitive, and outsize relative to the size of the units.

Walnut Creek could waive fees for 100% affordable housing, and commit to sending a letter asking e.g. local school districts and the Contra Costa Central Sanitary District to reduce their fee schedules for 100% affordable housing.

Mid cycle rezoning

Walnut Creek is currently not planning an EIR or rezoning for its Housing Element. Its recent production numbers have been far short of what is necessary to meet its RHNA target.

San Francisco committed to a mid cycle rezoning¹² if it does not issue a target number of permits by 2027. This would be a good program for Walnut Creek to adopt, using the language that San Francisco uses.

Missing middle housing

We are disappointed that Walnut Creek's missing middle program points only to existing state laws, and does not even promise to implement a relaxed version of those programs with respect to unit sizes or parking requirements. We do not think that this will ensure new residents have opportunities throughout Walnut Creek, or ensure that all neighborhoods in Walnut Creek will contribute to meeting the city's housing goals.

Walnut Creek could adopt one of the missing middle programs from nearby cities:

- **Concord** proposes rezoning its wealthier areas in the south and east for missing middle housing by 2026, and also permitting 4 units (a duplex and two ADU's) on either side of a SB 9 lot split, double the state requirement. Concord's program includes a target of 1000 units generated through these programs.¹³

¹² Program 8.1.5, page 142,

<https://sfhousingelement.org/final-draft-housing-element-2022-update-12-14-2022>

¹³ Program 8 and Program 9 described here,

[https://stream.ci.concord.ca.us/OnBaseAgendaOnline/Documents/ViewDocument/Agenda%20Staff%20Report%20for%20-%20Housing%20Element%20HCD%20Comments%20and%20Direction%20\(15591\).pdf?meetingId=924&documentType=Agenda&itemId=15591&publishId=18267&isSection=false](https://stream.ci.concord.ca.us/OnBaseAgendaOnline/Documents/ViewDocument/Agenda%20Staff%20Report%20for%20-%20Housing%20Element%20HCD%20Comments%20and%20Direction%20(15591).pdf?meetingId=924&documentType=Agenda&itemId=15591&publishId=18267&isSection=false)

- **San Ramon** proposed rezoning single family areas for 15 DUA with a target of adding 50 homes. We think this could be more aggressive - 150 to 200 homes is a better target - but this is the right direction.¹⁴

Soft story program

Walnut Creek has a number of apartment buildings¹⁵ that have a “soft” or “weak” story, typically exposed ground floor parking with unreinforced wood supports.¹⁶ These buildings are vulnerable in an earthquake that could lead to the loss of naturally affordable housing in Walnut Creek.

Walnut Creek could pass an ordinance mandating upgrades after a certain date, and/or offer matching funds to encourage upgrades. Walnut Creek can use the model ordinance created by ABAG in 2017.¹⁷

Ventilation upgrades for schools and apartments near freeways

A disproportionate amount of multifamily housing in Walnut Creek is concentrated close to the freeway. Freeway pollution is associated with respiratory problems, weight gain, heart disease, emergency room visits, lower birth weight infants, school absence, and worse test scores. These can be mitigated somewhat by effective indoor ventilation programs (MERV 13 central ventilation filtering and air purifiers).

Walnut Creek could for example:

- Conduct an education program about the health risks of being near the freeway and mitigation techniques.
- Subsidize the purchase of air purifiers or offer free ones.
- Apply for grants (or offer matching funds) to upgrade central ventilation in older schools and apartments to a MERV 13 standard
- Conduct and publish the results of yearly tests of indoor air quality in schools and apartments

Single stair reform

Current Walnut Creek building codes require two exits from every apartment, which means buildings need an interior corridor and two stairwells. Compared with a “single stair” (the standard in Seattle, New York, and all of Europe), this decreases the amount of livable space and makes it more difficult to add larger units with multiple bedrooms.¹⁸

¹⁴ “Program 18” here, [San Ramon's latest Housing Element draft](#).

¹⁵ And offices.

¹⁶ Examples would include 1185 Lincoln Ave, 120 and 130 Village Court.

¹⁷ https://abag.ca.gov/sites/default/files/soft_story_model_ordinance_0.pdf

¹⁸ For a more detailed explanation see [this two page memo on single stair reform](#) or [answers to frequently asked questions](#).

No interior hallway and only one egress would make development much more feasible on smaller, narrower or awkwardly shaped lots including sites 20, 85, 87, 88, 90, 100, 106, 109, 115, and 120.

Oakland's latest Housing Element draft commits to studying single stair reform. Elected officials in Berkeley and Alameda also expressed interest in the idea. We are also sponsoring state legislation on this issue. Walnut Creek could commit to studying this idea along with those cities, creating an ABAG or League of California Cities single stair working group, and/or taking a position on a single stair reform bill in the state Legislature.

Public Participation

Walnut Creek's staff was very friendly and helpful *unless* a comment or proposal involved a potential change to land use or governmental constraints, and then they could not be less interested in public feedback. Of the 20 cities or so we've looked at, Walnut Creek has seemed the least interested in incorporating input from the public, and the most committed to doing the legally required minimum in order to achieve a compliant Housing Element.¹⁹

This is deeply frustrating as a lifelong East Bay resident who's watched his friends and family move to cheaper states, as a Walnut Creek parent who wants to ensure the city's schools have steady enrollment, good teachers in stable housing, and as a human being who is concerned about rising numbers of unsheltered neighbors sleeping outside in the cold and rain.

While Appendix A summarizes the engagement from the community, it also provides useful examples of what I am describing. Even suggestions that wouldn't require Walnut Creek to do anything - a change to call for "high density housing" in the General Plan, instead of just "housing" - was dismissed with "Changes to the General Plan are not a Housing Element requirement." A critique of minimum lot sizes, which research has shown were used in the postwar era to keep minorities out of neighborhoods,²⁰ got a response of "Minimum lot size restrictions are established pursuant to state law," which misses the point about affordability or development feasibility.

The city could have incorporated some of this, or said, "We appreciate the suggestion," or, "We'll consider this," or, "This feedback is noted," or, "A complex policy like this would require direction from the City Council" but instead over and over again defaulted to arguing that they weren't legally required to do something so they were not going to do it. From making zero changes to sites to the public participation appendix, this stance is pervasive throughout the document and substantially weakens it.

Conclusion

We look forward to continuing to engage with the City of Walnut Creek throughout the Housing Element process.

¹⁹ To be clear, we do not think they meet this bar.

²⁰ https://www.tom-cui.com/assets/pdfs/LotsEZ_Latest.pdf