

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

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November 29, 2022

Brent Smith, Community Development Director
City of Oakley
3231 Main Street
Oakley, CA 94561

Dear Brent Smith:

RE: City of Oakley 6th Cycle (2023-2031) Draft Housing Element

Thank you for submitting the City of Oakley's (City) draft housing element received for review on August 31, 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 telephone conversation on November 18, 2022, with you, Kenneth Strelo, Planning Manager, and Chelsey Payne and Heidi Gen Huong, the City's consultants. In addition, HCD considered comments from Campaign for Fair Housing Elements and Yimby Law, and Cox Castle and Nicholson LLP 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 revisions needed to comply with State Housing Element Law.

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 (February 15, 2023), then any rezoning to make prior identified sites available or accommodate the regional housing needs allocation (RHNA) shall be completed no later than one year from the statutory deadline pursuant to Government Code sections 65583, subdivision (c) and 65583.2, subdivision (c). 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 these rezones 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 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, 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>.

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 meets housing element requirements for these and other funding sources.

HCD is committed to assisting the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact me at Melinda.coy@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melinda Coy', with a long horizontal stroke extending to the right.

Melinda Coy
Proactive Housing Accountability Chief

Enclosure

APPENDIX CITY OF OAKLEY

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. Review and Revision

Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element. (Gov. Code, § 65588 (a) and (b).)

The review requirement is one of the most important features of the element update. The review of past programs should analyze the City's accomplishments over the previous planning period. This information provides the basis for developing a more effective housing program. A thorough program-by-program review is necessary to evaluate City's performance in addressing housing goals. Specifically, as part of this analysis, the element should evaluate the effectiveness of programs by quantifying results where possible, compare those results to the objectives projected or planned.

B. 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))*

Enforcement: The analysis must describe compliance with existing fair housing laws and regulations and include information on fair housing outreach capacity.

Assessment of Fair Housing: The element provides data and analysis regarding the patterns of various socio-economic characteristics across all components of the required analysis (e.g., segregation and integration, access to opportunity, displacement). However, the element should also discuss and analyze patterns and trends over time across census tracts for the various socio-economic characteristics and provide conclusions based on that analysis to better formulate policies and programs and carry out meaningful actions to Affirmatively Furthering Fair Housing (AFFH).

Local Data and Knowledge and Other Relevant Factors: The element must include local data, knowledge, and other relevant factors to discuss and analyze any unique attributes about the City related to fair housing issues. Also, the element must include other relevant factors that contribute to fair housing issues in the jurisdiction. For instance, the element could incorporate the historical land use and investment practices and other information and demographic trends outlined in the Introduction and community context section of the housing element to help inform the AFFH analysis.

Access to Opportunity: The element identifies Oakley as mostly a lower and moderate resourced community and identifies several areas of disparities including lower education scores and lack of access to transit. As part of the analysis, the element should incorporate local data and knowledge to identify historic trends that influence these patterns. The element could also describe current community development and other efforts the City is undertaking to address these disparities and include programs to address patterns as appropriate.

Disproportionate Housing Needs, Including Displacement: While the element provides some discussion on cost-burdened households, persons experiencing homeless, and displacement, it must include a complete analysis of households in overcrowded conditions and substandard housing. This analysis should utilize local data and knowledge and other relevant factors. For the analysis of overcrowding the analysis should specially address overcrowding for both homeowners and renters. For substandard housing, the element should discuss areas of the City where proportions of housing units needing rehabilitation may be higher than other areas and should utilize local knowledge.

Sites Inventory: The element must include data on the location of regional housing need allocation (RHNA) sites by income group relative to all fair housing components. The analysis should address the number of units by income group and location, any isolation of the RHNA by income group, magnitude of the impact on existing concentrations of socio- economic characteristics and discuss how the sites improve fair housing conditions. The analysis should be supported by local data and knowledge and other relevant factors and programs should be added or modified as appropriate to promote inclusive and equitable communities. For example, the element could examine the concentration of moderate income RHNA in the Downtown Specific Plan.

Contributing Factors: The element should re-assess and prioritize contributing factors based on a complete analysis.

2. *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).)*

Overpayment: While the element identifies the total number of households overpaying for housing, it must quantify and analyze the number of lower-income households overpaying for housing by tenure (i.e., renter and owner) and add or modify policies and programs as appropriate.

Housing Conditions: The element identifies the age of the housing stock. However, it must include analysis of the condition of the existing housing stock and 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 builders/developers, including non-profit housing developers or organizations.

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).)*

Progress in Meeting the RHNA: The City's RHNA may be reduced by the number of new units built, approved, or pending since June 30, 2022; however, the element must demonstrate their availability in the planning period. Availability should address the status, anticipated completion, any barriers to development and other relevant factors such as build out horizons, phasing, and dropout rates to demonstrate the availability or likelihood of development in the planning period.

Sites Inventory: The element lists parcels by various factors such as size, zoning, general plan designation and existing use. However, the description of existing use is generic "e.g., non-vacant" and must include sufficient detail to facilitate an analysis of the potential for addition development on nonvacant sites.

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the City must submit an electronic sites inventory with its adopted housing element. The City must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml#element> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

Realistic Capacity: While the element provides assumptions of buildout for sites included in the inventory, it must also provide support for these assumptions. For example, the element should demonstrate what specific trends, factors, and other evidence led to the assumptions. The estimate of the number of units for each site must be adjusted as necessary, based on the land use controls and site improvements, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction, and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities.

Suitability of Nonvacant Sites: The element identifies nonvacant sites to accommodate the regional housing need and outline the general methodology for how sites were considered. To demonstrate the redevelopment potential of the sites in the inventory, the element should relate the factors described in the methodology to the characteristics of each site. In addition, a complete analysis must demonstrate the

extent to which existing uses may impede additional residential development. The element should summarize past experiences converting existing uses to higher density residential development, include current market demand for the existing use, provide analysis of existing leases or contracts that would perpetuate the existing use or prevent additional residential development and include current information on development trends and market conditions in the City and relate those trends to the sites identified. (Gov. Code, § 65583.2, subd. (g).) For sites with residential uses, the inventory could also describe structural conditions or other circumstances and trends demonstrating the redevelopment potential to more intense residential uses. For nonresidential sites, the inventory could also describe whether the use is operating, marginal or discontinued, and the condition of the structure or could describe any expressed interest in redevelopment and describe other incentives or standards to encourage additional residential development on these sites.

Suitability and Availability of Infrastructure: While element demonstrates sufficient capacity, it must identify if sites identified have access to existing or planned water, sewer, and other dry utilities supply. (Gov. Code, § 65583.2, subd. (b).)

Environmental Constraints: While the element generally describes a few environmental conditions within the City (Table H3-1), it must describe how these conditions relate to identified sites including any known environmental constraints within the City that could impact housing development in the planning period. (Gov. Code, § 65583.2, subd. (b).)

Sites with Zoning for a Variety of Housing Types:

Emergency Shelters: The element identifies one City-Owned site to accommodate the emergency shelter need. The element should describe the process that would be necessary to approve an emergency shelter including decision making criteria for approval of the use of the site.

Manufactured Housing: The housing element must demonstrate the jurisdiction's zoning code allows and permits manufactured housing in the same manner and in the same zone as a conventional or stick-built structures are permitted.

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 must identify and analyze all relevant land use controls and evaluate the cumulative impacts of land use controls on the cost and supply of housing, including the ability to achieve maximum densities and cost and supply of housing. Specifically, the element should describe and analyze the development standards within the Downtown Specific Plan including whether 100 percent residential development is allowed. The analysis should also describe past or current efforts to remove identified governmental constraints.

Affordable Housing Overlay: The element relies on sites in the Affordable Housing Overlay (AHO). While some information was provided on how the overlay allows residential the element must include a complete description and analysis of the Overlay, including affordability requirements, development standards, and application processing procedures. The elements must also clarify if the maximum density allowed under the AHO is considered the base density for purposes of calculating density.

On/Off-Site Improvements: While the element describes the on and off-site improvement requirements, it does not analyze those requirements on the cost and supply of housing. In particular, the element states that developers are response for various off-site improvements and infrastructure improvements.

Constraints on Housing for Persons with Disabilities: The analysis must describe and analyze any zoning code definitions of family.

C. 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).)*

Programs must demonstrate that they will have a beneficial impact within the planning period. Beneficial impact means specific commitment to deliverables, measurable metrics or objectives, definitive deadlines, dates, or benchmarks for implementation. Deliverables should occur early in the planning period to ensure actual housing outcomes. All programs should be evaluated to ensure meaningful and specific actions to assist in implementation and include objectives, quantified as appropriate.

In addition, programs should be revised as follows:

- *Action 1.4 (Promote Accessory Dwelling Units (ADU))*: The program should describe specific actions the City will take to promote the Pre-Approved ADU plans and How-to-Guide.
 - *Action 1.6 (Density Bonus Ordinance)*: The program should provide specific timing for updating the density bonus ordinance.
 - *Action 1.7 (Monitor Development Fees)*: The program should have a specific timing for monitoring, include information on how the city will monitor, and depending on the result, commit to actions to mitigate constraints.
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. (Gov. Code, § 65583, subd. (c)(1).)

As noted in Finding B3, 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. In addition, the element should be revised as follows:

Action 1.8 (Amendment to the Downtown Specific Plan): Given the dependence of the Downtown Specific Plan for sites within the inventory, the City should consider accelerating the development of modifications to this plan. Alternatively, rather than all zoning modifications being completed by 2025, the City could phase zoning modifications that must be made to comply with state law or remove constraints to the development earlier in the planning period.

3. *The State Housing Element shall contain programs which assist in the development of adequate housing to meet the needs of extremely low-, very low-, low- and moderate-income households. (Gov. Code, § 65583, subd. (c)(2).)*

Action 1.3 (Encourage Development of New Affordable Rental Housing) and Action 3.4 (Housing for Extremely-Low Income (ELI) and Special Needs Groups): These program should be revised to include specific actions on how it will implement this program, timeframes for each action, and objectives and metrics to demonstrate how these housing needs will be addressed.

4. *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 B4, the element requires a complete analysis of potential governmental 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.

Action 1.5 (Objective Standards): The program should ensure that when adopted, objective standards should facilitate the development of housing at the densities that will be allowed under the AHO, once amended.

Action 3.6 (Zoning Amendments for Special Needs Housing): The program must specify how it will reduce constraints for residential care facilities for more than six persons. zoning should simply implement a barrier-free definition of family instead of subjecting, potentially persons with disabilities, to special regulations such as the number of persons, population types and licenses. Permitting procedures should ensure inclusion in all residential zones and approval certainty and objectivity for housing for persons with disabilities.

5. *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 protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law. (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding B1, the element must be revised to add or modify goals and actions based on the outcomes of a complete analysis. In addition, goals and actions must specifically respond to the analysis and to the identified and prioritized contributing factors to fair housing issues and must be significant and meaningful enough to overcome identified patterns and trends. Actions should be revised to include specific commitments, milestones, geographic targeting and metrics or numerical outcomes and, as appropriate, must address housing mobility enhancement, new housing choices and affordability in high opportunity areas, place-based strategies for community revitalization and displacement protection. Given that most of the City is considered a low and moderate resource community, the element could focus on programs that center on place-based strategies for community revitalization, protecting residents from investment-driven displacement, and enhancing housing mobility to encourage the development of more housing choices.

D. 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).)

The element must include quantified objectives to establish an estimate of housing units by income category that can be constructed, rehabilitated, and conserved over the planning period. While the element includes objectives for new construction and preservation, it must include objectives for rehabilitation.

E. 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).)

While the element includes a general summary of the public participation process, the element must also demonstrate diligent efforts were made to involve all economic segments of the community in the development of the housing element. Specifically, the element must describe the efforts to circulate the housing element among lower-income households and organizations that represent them and how the City involved such groups and persons in the element throughout the process. In addition, while the element summarizes public comments, it should describe how they were considered and incorporated into the element.