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Response to Draft 4 of the 2022 Housing Element Update

EXECUTIVE SUMMARY

1. Identify mandatory programs to remain in substantial compliance, as well as consequences for failure to satisfactorily complete the mandatory actions.
2. The City should select one of the three rezoning scenarios and provide corresponding “post-rezoning” densities on HCD’s electronic sites inventory form.
3. The City must add a mid-cycle “circuit breaker” to the element, as stipulated in HCD’s review letter. This would be a program to trigger robust mid-cycle permitting adjustments if pipeline yields fall short of projections, or if San Francisco misses deadlines for scheduled programs which are essential for substantial compliance..
4. We recommend jump-starting housing production with (A) a clean ballot measure to remove discretionary review from the San Francisco Charter, and (B) a social housing program which replaces impact fees and affordability mandates.

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Dear Shelley Caltagirone:

While Draft 4 represents a distinct improvement over the previous housing element draft, we remain concerned about the City's desire and ability to resolve the housing crisis and comply with state housing law. There are good ideas in this draft, including actions to affirmatively further fair housing through place-based revitalization in addition to programs which strengthen tenant protections and reduce displacement and homelessness. However, the draft is fuzzy on many programmatic details, and it's not clear that the programs proposed would meaningfully reduce constraints on the development of housing. The City must do more in response to the August review letter written by the California Department of Housing and Community Development (HCD).

We are greatly concerned that the programs in the housing element do not reflect the dire economic reality in San Francisco with regards to the widespread infeasibility of housing projects—and the role of the city's regulatory framework in creating that reality—or the seriousness of the City's lack of compliance with state law. HCD's multiple letters to San Francisco indicate that such issues must be addressed in the housing element. The consequences for non-compliance could hardly be higher, ranging from the loss of affordable housing funding to the potential for "builder's remedy" projects.¹ With a tight January deadline, this letter includes our programmatic recommendations to achieve compliance by the January 31, 2022 deadline.

1. Identify mandatory program actions, and consequences for failure to satisfactorily complete the mandatory actions.

HCD describes housing elements as "contracts" between the City and the state. Although housing elements often include *some* programs which are not strictly

¹ California Gov't Code § 65589.5(d)

necessary for compliance,² San Francisco's draft housing element is unusually long and contains literally *hundreds* of proposed actions, each with a timeframe. To avoid misunderstandings between San Francisco and HCD, we urge that the housing element explicitly designate which programmatic actions are fundamental and individually necessary to remain in substantial compliance. For programs which deal with issues of compliance with state law, it may be especially wise for San Francisco to include fundamental programs in which the City consults with HCD for a period to ensure compliance.³ The housing element could also pre-specify certain remedial measures, such as the "circuit breaker" discussed below. Such measures would kick in automatically if an essential milestone is missed. Although it would not be acceptable if the City designates a few programs as individually fundamental but then fails to implement a host of less individually-essential programs, the demarcation would focus the City's attention on the programs which matter most.

2. Designate one of the three rezoning scenarios as the default scenario and provide corresponding "post-rezoning" densities on the electronic sites inventory form.

The draft Sites Inventory and Rezoning Program describes three rezoning scenarios (pp. 28-32), without committing the City to any of them. If the City adopts its housing element on time, it will have three years to implement one of these scenarios, or a combination, or an equivalent alternative. However, it is clear from HCD's Sites Inventory Form, and from the Housing Accountability Act (HAA), that the housing element must at least provisionally choose one of the three scenarios and record the corresponding "post-rezoning" densities in the sites inventory spreadsheet.

² California Gov't Code § 65583 states that housing elements *must* include programs for "the preservation, improvement, and development of housing."

³ HCD's [Housing Policy and Practice Review](#) would provide an opportunity to put such a program into practice.

The HAA specifically disallows a city from relying on its zoning code or general plan to deny or “render infeasible” an affordable housing project on a site the housing element designates as “suitable” for low- or moderate-income housing, if the density of the project is “consistent with the density specified in the housing element.”⁴ This provision operates as a fallback in the event that a city fails to complete its rezoning on time. For it to work as intended, however, the housing element must designate future densities for the sites contemplated for rezoning, as HCD requires,⁵ lest there be no way of saying whether the density of a proposed project is consistent with “the density specified in the housing element.”

To be clear, the designation of post-rezoning densities on the sites-inventory spreadsheet *does not* bind a city council to adopt a rezoning plan that allows the same densities on the inventory sites. A city council is always free to adopt an alternative plan, so long as the City does so by the statutory deadline and the alternative plan fully accommodates the RHNA shortfall. If the City adopts an alternative plan, the City would submit an updated electronic inventory to HCD and, if necessary, housing element amendments, in connection with the rezoning.

3. Add a mid-cycle “circuit breaker” to the housing element, as stipulated in HCD’s review letter.

The housing element’s plan for accommodating the City’s share of regional housing need relies heavily on yield from development-agreement (“DA”) and other projects that are already in the housing pipeline. However, these housing-element projections are speculative, and given that housing production in the City has nearly ground to a halt (in part because of regulatory burdens and fees that have made development of

⁴ Gov’t Code § 65589.5(d)(5)(A)

⁵ [Electronic Housing Element Site Inventory Form Instructions](#), p. 7, Table B, Columns O & P

multifamily housing on most sites in the City economically infeasible⁶), we think it is doubtful that the projections will be realized.

HCD's review letter told the City to account for these uncertainties by establishing a mid-cycle adjustment plan:

[G]iven the element's reliance on pipeline projects, the element must include programs with actions that commit to facilitating development and monitoring approvals of the projects ... *with a commitment to alternative actions (e.g., rezoning) if assumptions are not realized* [emphasis added].⁷

However, the current draft of the housing element does not include a circuit-breaker or any other provision for mid-cycle adjustment. We think it is imperative that the City heed HCD's directive to *commit* through the adopted housing element to a robust mid-cycle adjustment that would be implemented automatically in the event that pipeline yields fall short of projections.

The circuit breaker should also be automatically triggered if the City fails to implement the program milestones it denotes as essential.

4. Give the City's voters the opportunity to Jump start housing production at all income levels with (A) a clean ballot measure to remove discretionary review from the San Francisco Charter, and (B) a revenue measure and social housing program to replace impact fees and affordability mandates.

The draft housing element promises that the City will jump start housing production by adopting a Housing Sustainability District no later than January 31, 2024, and by removing Planning Commission hearings on HAA-protected projects for a four-year

⁶ [DRAFT Analysis of Governmental and Non-Governmental Constraints](#), Subattachment 6

⁷ Letter from Paul McDougal, Senior Program Manager, HCD, to Rich Hillis, Planning Director, City and County of San Francisco, Aug. 8, 2022, Appendix p. 2

period. Although these actions are welcome, there is little guarantee that they will be sufficient. The draft element includes feasibility analysis by Century Urban which shows that housing projects are economic losers in essentially the entirety of San Francisco as of this writing.⁸ Moreover, in response to HCD's demand for an analysis of the cumulative impact of constraints on housing development, the City threw up its hands and declared that the "tremendous range" of constraints makes such an analysis impossible.⁹ The pro forma studies by Century Urban do not consider whether large-scale reductions in impact fees, inclusionary requirements, and other regulatory burdens would—cumulatively—make housing development feasible at scale.

Simultaneously, the City has not committed enough resources toward the accommodation of new affordable housing. Although the draft includes programs to seek more funding for affordable housing,¹⁰ it does not commit to concrete funding sources, and the City should be planning to finance 4,111 lower-income units per year until 2031. This target is nearly fourfold the City's yearly production record for affordable housing in the last five years.¹¹ One important question left unanswered is how such funding, once acquired, will be operationalized.

Given the serious limitations of the housing element's programs for making housing development feasible again and the lack of affordable housing funding, our position is that large-scale changes to constraints must be made quickly to take maximum effect during the planning period. This will require the electorate to vote to adopt several aspects of these changes due to provisions of the San Francisco Charter and the California Constitution. Given that voters have chosen to place [Proposition D](#) on the ballot this year, it is clear that there is a serious appetite for this kind of action.

⁸ [DRAFT Analysis of Governmental and Non-Governmental Constraints](#), Subattachment 6

⁹ *Ibid.*, p. 9

¹⁰ [DRAFT 4 of Goals, Objectives, Policies and Actions](#), pp. 80–81

¹¹ [2021 Housing Inventory](#), p. 5

Specifically, we urge that the housing element commit to placing several measures on the ballot:

- A) A clean repeal of the charter provision that makes all city permits subject to discretionary review
- B) A progressive parcel tax on parcels that are rezoned for higher-density housing, which would replace inclusionary mandates and impact fees for affordable housing and infrastructure with a social housing program. (The tax could be proportionate to the square footage of the parcel, or, better, to the square footage of the allowable building envelope.)
- C) A measure to authorize 100,000 units of mixed-income social housing

As to the first proposal, Propositions D and E on the November 2022 ballot, would effect partial repeals of discretionary review—but only for projects meeting a number of costly requirements. And in the case of Proposition E, the requirements are so difficult to satisfy that few—if any—projects would take advantage of it.¹² The fine distinctions between these measures will probably be lost on most voters. Given that discretionary review has long been recognized as a serious barrier to housing production in the City, especially in affluent neighborhoods, the City’s voters deserve a chance to get rid of it once and for all.

Our second proposal, for a progressive parcel tax that would replace impact fees and inclusionary mandates, would allow the City to capture the value created by upzoning and make serious headway toward its lower-income RHNA target—without inadvertently killing market-rate projects in the process. Because owners of rezoned parcels would have to pay the tax whether they redevelop their property or not, the tax would not discourage development. The revenue stream would also be far more stable than the revenue from impact and in-lieu fees in recent history. Notably, after

¹² San Francisco Chronicle. September 25, 2022. [“Endorsement: San Francisco needs affordable housing, not Prop. E’s cheap theater”](#)

the City ratcheted up inclusionary zoning requirements and in-lieu fees starting in 2017, fees collected by the City crashed as housing developments became increasingly infeasible.¹³ There are many precedents for a progressive parcel tax, including Proposition O on the November 2022 ballot, and the so-called Mello-Roos fees that are commonly used to finance infrastructure for suburban, greenfield development projects.

With a progressive parcel tax established, San Francisco could then issue bonds against the new tax revenue, as well as tax revenue collected from Proposition I (November 2019), to create a funding stream at the scale needed to fund a social housing measure. This is where the third ballot measure comes in. Voters overwhelmingly approved Proposition K in November 2020 to authorize 10,000 units of social housing. A larger scale version of that ballot measure would allow San Francisco to meet its RHNA goals—especially for lower-income households—by building housing itself. The City should commit to completing the social housing study specified in the draft element¹⁴ within one year and subsequently commit to enacting a social housing program.

In conclusion, there is still much work to be done. We appreciate the dedication of the hard-working public servants at San Francisco Planning and urge the department to take the necessary steps needed to write a housing element capable of achieving substantial compliance with state law. We look forward to engaging with the City as it moves toward the end of the housing element update cycle.

¹³ San Francisco Chronicle. June 27, 2022. [“San Francisco housing development has slowed to a crawl, with no uptick in sight: The costs are simply too high”](#)

¹⁴ [DRAFT 4 of Goals, Objectives, Policies and Actions](#), pp. 81

Best regards,

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