

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

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December 14, 2022

Rich Hillis, Director
San Francisco Planning Department
City and County of San Francisco
49 South Van Ness Avenue
San Francisco, CA 94103

Dear Rich Hillis

RE: San Francisco's 6th Cycle (2021-2029) Revised Draft Housing Element

Thank you for submitting the City and County of San Francisco's (City) draft housing element received for review on October 17, 2022, along with revisions received on December 6. HCD also received minor technical changes on December 12, 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 several communications with you and your staff on November 7 and 30 and December 5 and 12, 2022. In addition, HCD considered comments from multiple individuals and organizations, including but not limited to Mission Economic Development Agency, Council of Community Housing Organizations, Kevin Burke, Christopher Elmendorf, SF YIMBY, YIMBY Law, Farella Braun and Martel LLP, Macy Architecture, Mike Kehl, Georgia Schuttish, Mike Schiraldi, San Francisco Chapter of American Institute of Architects, and residents of Glen Park.

The revised draft element addresses many statutory requirements described in HCD's August 8 review; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code), as follows:

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).)*

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... (Gov. Code, § 65583, subd. (c)(5).)

Program 8.1.9 (Monitoring Affirmatively Furthering Fair Housing (AFFH)): While the program tracks the progress of AFFH goals and metrics, it should include a

specific commitment to evaluate the effectiveness of AFFH programs, including displacement and place-based strategies toward community preservation and revitalization. The evaluation should also seek to harmonize the multiple goals of housing supply, choice, affordability, and conservation.

2. *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).)*

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... (Gov. Code, § 65583, subd. (c)(1).)

Adequate Sites Alternative: The element was revised to utilize development at-risk of conversion to market rate uses under the alternative adequate sites. (Gov. Code, § 65583.1, subd. (c).) While the element now provides additional information on committed funding assistance for these units, it must still demonstrate how these units will meet the requirements of Government Code section 65583.1, subdivision (c). Specifically, the element must at least include a program or action that commits to the following:

- Identify the specific, existing sources of committed assistance and dedicate a specific portion of the funds from those sources to the provision of housing pursuant to this subdivision.
- Indicate the number of units that will be provided to both low- and very low-income households and demonstrate that the amount of dedicated funds is sufficient to develop the units at affordable housing costs or affordable rents.
- Demonstrate that the units will meet the following requirements:
 - long-term affordability covenants and restrictions for occupancy of at least 55 years;
 - located within an “assisted housing development”;
 - found (via a public hearing) eligible for preservation, with a reasonable expectation that the units will change from affordable to another use during the next eight years;
 - At the time of occupancy, the unit is in decent, safe, and sanitary condition; and
 - At the time of identification, the unit is available at affordable cost to persons or families of low- or very low-income.

Nonvacant Sites: As a reminder, the element relies upon nonvacant sites to accommodate more than 50 percent of the regional housing needs allocation (RHNA) for lower-income households. As part of adoption, the resolution must contain findings, based on substantial evidence, that the existing uses will likely be discontinued during the planning period. Absent findings in the adoption resolution, the existing uses will be presumed to impede additional residential development, nonvacant sites will not be utilized toward demonstrating adequate sites to accommodate the RHNA and the element will not comply with housing element law.

Publicly-Owned Sites: HCD's prior review found that the element must 1) include a program committing to complying with the Surplus Land Act (Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5) and 2) include a schedule of actions (with discrete timing) to facilitate development including but not limited to annual outreach with developers, rezoning if necessary, financial assistance, issuing requests for proposals, facilitating any subsequent entitlements, and numerical objectives by affordability. The revised element includes Action 1.2.6 to "continue and expand" the City's Public Land Program through addressing resource gaps and leveraging resources and partnerships to maximize affordability but must also be revised with specific actions and timelines to encourage and facilitate development on these sites.

Sites Inventory Mid-term Evaluation (Action 8.1.5): The element now includes a program committing to completing a mid-term evaluation and making adjustments if there is a shortfall in the number of units built to address the RHNA. However, several uncertainties or potentially changing circumstances surround the beneficial impact of the program in the planning period. For example, any necessary and additional rezoning will likely occur late in the planning period. Also, the outcomes of how the City will implement the calculations and various constraints analyses and effectiveness of programs, not limited to actions adding residential capacity, is undetermined or may not have sufficient time for an appropriate evaluation. For these and other reasons, the City should pursue its most aggressive rezoning scenario as part of adoption and implement the mid-term evaluation in consultation with HCD, including HCD approval. Further, Action 8.1.5 should be modified to (a) account for progress toward the RHNA by income group, (b) revise the additional rezoning beyond 115 percent of the projected shortfall to two times or affirmatively increase capacity and reduce constraints based on the various analyses of constraints (Program 8.1.8), and (c) consider outreach with areas that may be disproportionately impacted with displacement risk beyond Priority Equity Geographies.

By-right Requirements: The element includes various programs that commit to by-right processing, including, for example, Programs 7.1.1 (Shortfall Rezoning), 8.4.4 (Prior Identified Sites) and 8.6.2 (Permanent Supportive Housing and Low Barrier Navigation Centers). For your information, these programs must be implemented in a manner that is truly without discretionary action and should not be combined with other approaches that diminish effectiveness.

The element will meet the statutory requirements of State Housing Element Law once it has been revised and adopted to comply with the above requirements.

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. Additionally, HCD recognizes that the City is implementing various programs and actions to address meeting the requirements of AFFH and producing housing units. As the City implements these efforts including rezoning and constraint reduction programs, the City should continue to meaningfully engage with all segments of the community, especially in areas at high risk of displacement, priority equity geographies, and cultural districts. Please be aware, any revisions to the element must be posted on the local government's website and a link must be emailed 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, 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 (January 31, 2023), then any rezoning to make prior identified sites available or accommodate the RHNA, including for lower-income households, shall be completed no later than one year from the statutory deadline. 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 and County fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until rezones pursuant to Government Code section 65583 subdivision (c)(1)(A), or Government Code section 65583.2, subdivision (c), are completed.

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 will meet housing element requirements for these and other funding sources.

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>.

HCD appreciates the continued dedication and diligence that you and your housing element team has provided during the review. We are committed to assisting the City and County in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Sohab Mehmood, of our staff, at sohab.mehmood@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall", with a stylized flourish at the end.

Paul McDougall
Senior Program Manager