

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

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November 28, 2023

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

RE: City and County of San Francisco – Corrective Action Letter

Dear Rich Hillis:

The California Department of Housing and Community Development (HCD) has reviewed the City and County of San Francisco's (City) obligations under the housing element and the San Francisco Housing Policy and Practice Review (PPR)¹ and hereby issues its written findings pursuant to Government Code section 65585, subdivision (i).

In making its findings, HCD reviewed a letter received from Mayor London Breed on November 8, 2023; letters received from Rich Hillis, Planning Director, and Supervisor Myrna Melgar on November 21, 2023; and amendments to the proposed Constraints Reduction Ordinance introduced and approved at the November 27, 2023 Land Use and Transportation Committee meeting. In addition, HCD has met several times with City staff to discuss the City's efforts.

HCD appreciates the City's ongoing communication with HCD and its efforts to implement the housing element and PPR. However, the City has failed to timely implement Action 8.8.2, included in its housing element, which commits the City to implement Required Actions identified in the PPR as critical to addressing constraints to housing production identified in the Key Findings and, in some cases, to complying with state housing laws. Specifically, Required Actions 1.2, 1.4, 1.7, and 1.10 were due within 30 days of the October 25, 2023 release of the PPR (i.e., by November 24, 2023) and have not been implemented. In addition, housing element action 8.4.5 was due on July 31, 2023 and has not been implemented.

¹ Available at <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/plan-report/sf-housing-policy-and-practice-review.pdf>.

HCD requests that the City review this correspondence and provide a written response to these findings within 30 days and no later than December 28, 2023, describing how the City has implemented the relevant Actions. HCD will review and consider the City's written response before taking any action authorized by Government Code section 65585, subdivisions (i) and (j). As noted below, such action may include revoking HCD's finding that the City's housing element is in substantial compliance with State Housing Element Law and/or referral to the California Office of the Attorney General.

Housing Element Law

HCD must review any action or failure to act by a city that it determines to be inconsistent with an adopted housing element or section 65583 generally, and it must issue written findings to the city accordingly. (Gov. Code, § 65585, subd. (i)(1).) HCD must give the city a reasonable time, no longer than 30 days, to respond to these findings. (Gov. Code, § 65585, subd. (i)(1)(A).) If HCD does not receive a written response from the city within 30 days, or the response does not demonstrate that the program action has been implemented, then HCD may revoke its findings that the city's housing element substantially complies with Housing Element Law. (Gov. Code, § 65585, subd. (i)(1)(B).)

Additionally, HCD may notify the California Office of the Attorney General when a city takes actions that are inconsistent with an adopted housing element or Government Code sections 65583 and 65915, among other laws. (Gov. Code, § 65585, subd. (j).)

Findings

On February 1, 2023, HCD found the City's housing element in substantial compliance with Housing Element Law. HCD based its compliance finding on, among other things, a commitment to remove governmental constraints to production. In addition, Action 8.8.2 committed the City to revise local process, procedures, and other relevant requirements to implement priority recommendations of the PPR. This included the following PPR Required Actions that are now overdue:

- *Action 1.10: Approve other reforms in the proposed "Constraints Reduction" Ordinance and the Mayor's Housing for All Executive Directive that will implement the various housing element programs identified in HCD's June 16, 2023 Letter of Support and Technical Assistance.*

The Constraints Reduction Ordinance (Ordinance) has not been approved, though as introduced at the November 27, 2023 Land Use and Transportation Committee meeting, it largely addresses the concerns HCD raised in its October 26, 2023 Letter of Technical Assistance by implementing the housing element programs identified in HCD's June 16, 2023 Letter of Support and Technical Assistance. However, HCD is still reviewing the potential impact of

subsequent amendments that were introduced and approved during that meeting and not shared with HCD ahead of time. As stated on page 15 of the PPR, the City is expected to receive HCD's approval of any language used in implementing ordinances to ensure the fulfillment of the Required Actions. The new amendments could potentially limit the impact of the Ordinance and undermine the City's ability to implement Required Action 1.10. Specifically, the amendments would require a conditional use authorization for removal of one or more residential units unless the building was built after 1923 (regardless of the building's significance), is not located in a historic or conservation district (regardless of the building's significance), or has not been determined eligible for historic designation (regardless of whether it will actually be listed as historic).

To safely ensure that the City implements this Action on time, HCD recommends that the Board of Supervisors pass the Ordinance without these or additional substantive amendments.

- *Action 1.2: Eliminate Planning Commission hearings for all code-compliant housing development in all locations outside of Priority Equity Geographies. Please note, the City made the same commitment in housing element action 8.4.5 which had a due date of July 31, 2023.*

In its response to this letter, the City should further describe how various portions of the Ordinance or other measures work together to implement this action.

- *Action 1.4: Eliminate the use of "neighborhood character" and "neighborhood compatibility" terminology, as well as remove "light" and "air" terminology in case report findings to support discretionary requests.*

In its response to this letter, the City should further describe how various portions of the Ordinance or other measures work together to implement this action.

- *Action 1.7: Require requests for waivers and concessions under State Density Bonus Law to be processed by the Planning Department, not the Planning Commission, when no other entitlements are required.*

Once approved, the proposed Ordinance would accomplish this, so long as the Planning Commission has delegated this authority to the Planning Director. In its response to this letter, the City should confirm that the Planning Commission has done so.

Based upon communications with City staff, HCD finds that the City has failed to implement these program actions within the timeframes committed to in the City's adopted housing element and the PPR. HCD also reminds the City of its continuing obligation to implement PPR Required Actions 1.5, 3.1, and 5.1, and appreciates the City's efforts to meet the November 24, 2023 deadline for these actions.

Consequences

Various consequences may apply if HCD revokes its finding that the housing element is in substantial compliance with Housing Element Law. First, noncompliance will result in ineligibility or delay in receiving state funds that require a compliant housing element as a prerequisite, including, but not limited to, the following:

- Permanent Local Housing Allocation Program
- Local Housing Trust Fund Program
- Infill Infrastructure Grant Program
- SB 1 Caltrans Sustainable Communities Grants
- Affordable Housing and Sustainable Communities Program

Second, compliance with existing state housing laws is a mandatory threshold for attaining HCD's Prohousing Designation. Therefore, revocation of the City's housing element compliance would make the City ineligible for Prohousing Designation until HCD finds the housing element is again in substantial compliance and approves the Prohousing Designation application.

Third, jurisdictions may face additional financial and legal ramifications. HCD may notify the Office of the Attorney General, which may bring suit for violations of State Housing Element Law. Further, state law provides for court-imposed penalties for persistent noncompliance, including financial penalties. For example, Government Code section 65585, subdivision (l)(1), establishes a minimum fine of \$10,000 per month, up to \$100,000 per month. If a jurisdiction remains noncompliant, a court can multiply those penalties by a factor of six. Other potential ramifications include the loss of local land use authority to a court-appointed agent.

In addition to these legal remedies available in the courts, under the Housing Accountability Act, jurisdictions without a substantially compliant housing element cannot rely on inconsistency with zoning and general plan standards as a basis for denial of a housing project for very low-, low-, or moderate-income households. (Gov. Code, § 65589.5, subd. (d).)

Next Steps

HCD provides the City until December 28, 2023 to provide a written response to these findings. If you have questions or need additional information, please contact Fidel Herrera at fidel.herrera@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Zisser", with a long horizontal flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability