

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [De Asis, Edward \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [BOS Legislation, \(BOS\)](#); [Young, Victor \(BOS\)](#)
Subject: FW: Housing Action Coalition letter of objection to the Affordable Housing Production Act.
Date: Wednesday, July 20, 2022 4:20:09 PM
Attachments: [HAC letter BoS July 19 2022.pdf](#)

Hello,

Please see below and attached for communication from the Housing Action Coalition regarding File Nos. 220631 and 220835.

File No. 220631 - Charter Amendment, Initiative Ordinance, and Policy Declaration - Affordable Housing Production Act

File No. 220835 - Hearing - Committee of the Whole - Charter Amendment, Initiative Ordinance, and Policy Declaration - Affordable Housing Production Act - July 19, 2022, at 3:00 p.m.

Sincerely,

Joe Adkins
Office of the Clerk of the Board
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
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From: Deborah Schneider <deborah@housingactioncoalition.org>
Sent: Tuesday, July 19, 2022 4:44 PM
To: ChanStaff (BOS) <chanstaff@sfgov.org>; DorseyStaff (BOS) <DorseyStaff@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; MelgarStaff (BOS) <melgarstaff@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Major, Erica (BOS) <erica.major@sfgov.org>; Navarrete, Joy (CPC) <joy.navarrete@sfgov.org>; Gibson, Lisa (CPC) <lisa.gibson@sfgov.org>
Subject: Housing Action Coalition letter of objection to the Affordable Housing Production Act.

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Dear Supervisors,

Attached for your records is a digital version of the letter of objection to the Affordable Housing Production Act.

Jake Price, who spoke on HAC's behalf at public comment, attempted to deliver the hard copy of the letter and all its accompanying exhibits to the Clerk's Office, but the submittal was refused in hard copy format.

I am therefore sending the letter separately from the exhibits, which we will assemble into a single file and send separately.

Thank you,

Deborah

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Deborah Schneider | Pronouns: She/Her
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July 19, 2022

President Walton
President of the Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Re: Affordable Housing Production Act; BOS File Nos. 220631 & 220835

Dear President Walton and Members of the Board of Supervisors:

On behalf of the Housing Action Coalition ("HAC"), a member-supported nonprofit that advocates for building more homes at all levels of affordability, I write to urge the Board of Supervisors ("Board") not to put the sham Affordable Housing Production Act ("Chan/Peskin Measure" at **Exhibit A**) before the voters. There is already a measure - the "Affordable Homes Now Initiative" ("Citizen Measure") - to create a streamlined approval process for projects that provide more affordable housing than required. Roughly 80,000 San Franciscans (16% of registered voters) signed the Citizen Measure. (Citizen Measure at **Exhibit B**.)

The Chan/Peskin Measure is not being put forward to streamline housing production. It is a cynical ploy to confuse and distract voters and divide the pro-housing vote. For the Board to place this on the ballot would be both illegal and unethical; unlike measures put on the ballot by citizen signature, the Chan/Peskin Measure cannot be placed on the ballot before environmental review under the California Environmental Quality Act ("CEQA") is completed. The Chan/Peskin Measure has not done this for one simple reason: time. There isn't enough of it to do an environmental review and qualify in time to sabotage the Citizen Measure, which will be on the November 2022 ballot. Should the Board illegally place the Chan/Peskin measure on the ballot, the HAC is prepared to immediately pursue all legal remedies available.

The Measures

On the surface, both the Chan/Peskin Measure and the Citizen Measure appear similar. Both proposals would streamline city approval for three kinds of qualifying projects — 100 percent affordable housing, teacher housing, and mixed-use projects. Both proposals require that labor is paid a prevailing wage, and both proposals involve an increase in affordable units for qualifying projects. However, there's a key difference: the higher affordability requirements in the Chan/Peskin Measure will be feasible for a more limited subset of projects and will result in fewer developers using it.

Here's how the figures break down and what it means for home builders. Let's say a developer wants to build a 100-unit project. Currently, San Francisco requires that 21.5 percent of homes in larger projects are designated affordable, so the 100-unit project would need to include 22 homes that are below market rate ("BMR").

The Citizen Measure would require a project to meet the 21.5 percent figure, plus 15 percent of the bonus affordable units. For example, to qualify, that 100 unit-project would now have to build 25 BMR homes.



The Chan/Peskin Measure, however, further increases the overall affordability requirement by 8 percent, so instead of 21.5 percent it would be 29.5 percent BMR homes. That means the 100-unit project would be required to designate 30 BMR homes. It also requires higher percentages of two- and three-bedroom units.

On the surface, the Chan/Peskin Measure appears to be the measure that more effectively addresses San Francisco's shortage of affordable homes. Even in San Francisco, everyone can agree that 30 affordable homes are better than 25.

However, for new homes to be built in the first place, they must be financially feasible for the homebuilders. The additional 8 percent of affordable housing that the Chan/Peskin Measure requires, won't necessarily result in more affordable homes being built because fewer multi-family projects will be feasible. Nonetheless, for some developers, the added cost associated with the higher affordable requirements may outweigh holding costs in a high interest rate environment with the risk of change in economic conditions during a lengthy approval process.

1. The Chan/Peskin Measure's CEQA Review Is Inadequate.

a. The "No Project" Determination Is Specious.

In the race to qualify the Chan/Peskin Measure for the November 2022 ballot, the public has been misled by CEQA findings stating:

The Planning Department has determined that the actions contemplated in this proposed Charter Amendment and ordinance comply with [CEQA]... Said determination is on file with the Clerk of the Board of Supervisors... and is incorporated herein by reference.

(Chan/Peskin Measure Sec. 1. at **Exhibit A.**) However, there is no environmental analysis in the file beyond a conclusory statement lacking any analysis whatsoever appended to the Clerk of the Board's request for environmental evaluation. It reads:

Not defined as a project under CEQA Guidelines Section 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

(July 14, 2022 CEQA Determination at **Exhibit C.**) This determination cannot withstand even the most cursory scrutiny under CEQA.

b. CEQA's Definition of a Project.

Under CEQA, a "project" is an activity (1) undertaken or funded by or requiring the approval of a public agency that (2) "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Pub. Res. Code Sec. 21065.) Zoning changes, even minor ones, are typically considered "projects" for CEQA purposes. The California Supreme Court held that a zoning change to allow medical marijuana dispensaries (4 in each city council district; 36 citywide) was a project under CEQA in *Union of Marijuana Patients, Inc. v. City of San Diego*, 7 Cal. 5th 1171 (2019).



The question posed in determining whether an ordinance is a project “is not whether the activity will affect the environment, or what those effects might be, but whether the activity's potential for causing environmental change is sufficient to justify the further inquiry into its actual effects that will follow from the application of CEQA.” (*Id.* at 1198.) If the proposed activity is the sort that is capable of causing direct or reasonably foreseeable indirect effects on the environment, some type of environmental review is justified, and the activity must be deemed a project.” (*Id.*) In *Union of Marijuana Patients*, the Court determined:

the establishment of new stores could cause a citywide change in patterns of vehicle traffic from the businesses’ customers, employees, and suppliers. The necessary causal connection between the Ordinance and these effects is present because adoption of the Ordinance was “an essential step culminating in action [the establishment of new businesses] which may affect the environment.”

(*Id.* at 1199.)

c. The Chan/Peskin Measure Is a Project and Must Complete an Environmental Review.

The Chan/Peskin Measure’s own findings contradict a determination that it is not a Project under CEQA. Its provisions for “[a]ccelerated review will allow San Francisco to incentivize and accelerate the development of housing projects that specifically expand the city’s affordable housing supply by reducing the time and expense associated with obtaining planning approval.” (Sec. 2(n).) A program that aims for more and faster housing construction obviously qualifies as a “project” capable of causing direct or reasonably foreseeable indirect effects on the environment.

This is particularly true given the Chan/Peskin Measure’s substantive changes to the rules governing qualified projects. Those projects would not be subject to CEQA review by virtue of being ministerial. CEQA requires the imposition of mitigation measures to reduce impacts to less-than-significant levels where feasible and consistent with project objectives. However, by making projects ministerial and subject to objective standards only, there is no mechanism for commonplace impacts to be mitigated.

It is impossible to square the rationale used to classify the Chan/Peskin Measure as not being a project, when the City’s Housing Element Update (see **Exhibit D**), which merely sets the stage for future changes, was classified as a project. The Draft EIR for the Housing Element Update (see **Exhibit E**) states:

The housing element update would modify the policies of the general plan’s housing element. It would not implement specific changes to existing land use controls (e.g., zoning) or approve any physical development (e.g., construction of housing or infrastructure). [Citation Omitted] As such, the proposed action would not result in any direct physical changes to the environment. Instead, the housing element update would result in reasonably foreseeable indirect changes. Specifically, the department assumes that adoption of the housing element update would lead to future actions, such as planning code amendments to increase



height limits along transit corridors and to modify density controls in low-density areas that are primarily located on the west and north sides of the city, designation of housing sustainability districts, and approval of development projects consistent with the goals, policies, and actions of the housing element update.

(Page S-2.)

As such, the housing element update would not result in any direct physical changes to the environment. Instead, the housing element update would result in reasonably foreseeable indirect changes. Specifically, the department assumes that adoption of the housing element update would lead to future actions, such as planning code amendments to increase height limits along transit corridors and modify density controls in low-density areas that are primarily located on the north and west sides of the city, designation of housing sustainability districts, and approval of development projects consistent with the goals, policies, and actions of the housing element update. Therefore, this EIR identifies the reasonably foreseeable impacts of future actions that would implement the proposed goals, policies, and actions, including rezoning actions that would enable increased housing density.

(Page 4-4.)

d. The Chan/Peskin measure will result in environmental impacts that should be evaluated at the project-level and cumulatively.

CEQA requires the imposition of mitigation measures to reduce impacts to less-than-significant levels where feasible and consistent with project objectives. However, by making projects ministerial and subject to objective standards only, there is no mechanism to require mitigation of common impacts:

- **Noise and vibration.** Because most San Francisco developments are built lot-line to lot-line, mitigation measures are often needed to reduce construction noise to acceptable levels. Where deep excavations occur near older buildings, particularly historic ones, mitigation measures are often required to avoid damaging adjacent structures. (See 1010V Mission Street, Mitigated Neg. Dec. at **Exhibit F**; see also 1101 Sutter Initial Study at **Exhibit G**.)
- **Transportation impacts/mitigation** are also common in San Francisco, particularly for projects where loading docks and driveways are on busy pedestrian or vehicular streets, are on narrow streets, have poor visibility, or where multiple projects are under construction in close proximity. Mitigation measures are needed to address transportation impacts.
- **Archeological resources.** Archeological resources are commonplace in San Francisco. Mitigation measures to test for the presence of archeological resources, evaluate their significance, and for preservation (either on- or off-site) are often required. (See 1010V



Mission Street, Mitigated Neg. Dec. at **Exhibit F**; see also Housing Element Update DEIR Maps at **Exhibit E**.)

- **Air Quality.** Construction equipment frequently generates diesel particulate and other emissions. For larger projects near residential buildings, schools, and other sensitive receptors, emissions may cause significant exposures and health risks without mitigation measures. (See 1101 Sutter DEIR at **Exhibit G**.)
- **Historic Resources.** Under CEQA, environmental impacts on a “historic resource” must be analyzed. Historic resources are broadly defined to include any building eligible for listing on the California Register, or actually listed on other state and local registers. Demolition of a historic resource is a significant impact under CEQA. The Peskin/Chan Measure allows for ministerial demolition of non-residential buildings that are considered historic resources under CEQA but do not fall within the Peskin/Chan Measure’s narrower class of protected historic buildings, along with more extensive alterations to certain contributory buildings listed in Articles 10 and 11 of the Planning Code. Buildings like the one at 3140 16th Street have been preserved by virtue of their eligible status and would be at heightened risk of demolition, as would numerous small-scale historic resources. These potentially significant impacts must be disclosed in an EIR before the measure is put to the vote on the ballot. (See 1101 Sutter DEIR at **Exhibit G**, 3140 16th St. records at **Exhibit H**; see also Historic Resources at **Exhibit I**.)
- **Cumulative Impacts.** All potential cumulative impacts should be studied, particularly in relation to the policy changes proposed in the Housing Element Update. In particular, due to the concentration of eligible historic buildings on the City’s east side and the relatively permissive development controls, the Chan/Peskin Measure could conflict with the Update’s goal of shifting more development to the west side and further burden public services on the east side. (See Housing Element Draft 3 Goals, Objectives, Policies, and Actions at **Exhibit D**)

2. Supervisors Cannot Bypass CEQA In Order to Place A Competing Measure on the Ballot.

In a case factually similar to the Chan/Peskin Measure, the California Supreme Court clearly held that the discretionary submission of a ballot measure to the voters by a local legislature is not exempt from CEQA. (*Friends of Sierra Madre v. City of Sierra* (2001) 25 Cal 4th 165.) The measure in *Friends* sought to delist 29 properties from the city’s historic register and was placed on the ballot over objections that the delisting required CEQA analysis. The city took the position that delisting was not a project, and the ballot measure ultimately passed. However, the court invalidated the measure for the City’s failure to comply with CEQA, agreeing with the Court of Appeals reasoning that the delisting would lead to a change in legal status under CEQA:

Although the city might still have the power to review the historical significance of the property when a demolition permit was sought, delisting might have the effect of removing the property from CEQA requirements for other types of use, for building permits for alteration, and for relocation of the property. Thus, delisting constituted a project with an effect that might cause a substantial adverse change in the significance of an historical resource.



(*Id.* at 182.) The Chan/Peskin Measure effectively removes a large number of properties from all CEQA requirements for qualified projects, while ignoring its clear duty to conduct an environmental review. Notably, the City and County of San Francisco argued in an amicus brief that “requiring CEQA compliance for city- council-generated initiatives will handicap a city in responding to a voter-sponsored land use initiative by offering its own alternative because the process of CEQA compliance cannot be completed before the voter-sponsored initiative must be placed on the ballot.” (*Id.* at 191.) The Court dismissed the argument and declined to create a legal loophole, noting elsewhere that:

Voters who are advised that an initiative has been placed on the ballot by the city council will assume that the city council has done so only after itself making a study and thoroughly considering the potential environmental impact of the measure. For that reason a preelection EIR should be prepared and considered by the city council before the council decides to place a council-generated initiative on the ballot. By contrast, voters have no reason to assume that the impact of a voter-sponsored initiative has been subjected to the same scrutiny and, therefore, will consider the potential environmental impacts more carefully in deciding whether to support or oppose the initiative.

(*Id.* at 190.)

The sponsors of the Chan/Peskin Measure are surely aware of the City’s obligations under CEQA. Each of the six sponsors voted to overturn the EIR for a large housing development at 469 Stevenson Street on grounds including the scale of the building in relation to nearby historic buildings. (Board of Supervisors Motion No. M21-182 at **Exhibit J**.) This decision, along with other housing disapprovals, prompted the California Department of Housing and Community Development (“HCD”) to review the Board’s actions as a possible violation of the Housing Accountability Act. The HCD expressed concern that these “actions are indicative of review processes that may be constraining the provision of housing in San Francisco.” (See **Exhibit K**.) Now the same supervisors whose actions are being scrutinized by the HCD for disapproving residential projects are ignoring legal obligations under CEQA in a mad dash to manipulate the results of a citizen-sponsored, pro-housing measure. This is bad faith violation of due process and subjects the Chan/Peskin Measure to a preelection legal challenge. (*Yes on Measure A v. City of Lake Forest* (1997) 60 Cal. App. 4th 620, 626 (“preelection challenges are desirable because “the presence of an invalid measure on the ballot steals attention, time and money from the numerous valid propositions on the same ballot. It will confuse some voters and frustrate others, and an ultimate decision that the measure is invalid, coming after the voters have voted in favor of the measure, tends to denigrate the legitimate use of the initiative procedure.” [citations omitted])).

Conclusion

The Chan/Peskin Measure is a transparently fraudulent attempt to confuse and divide voters with the sole purpose of undermining the Citizen Measure. It is being rushed to the ballot for political reasons. Too rushed. So rushed, in fact, that it has not gone through the normal procedural steps required for a measure placed on the ballot by the Supervisors, including, crucially, environmental review under CEQA. This fatal flaw subjects the Measure to a preelection legal challenge that will prevent the Measure from reaching the ballot. On behalf of the 16% of



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San Francisco voters who signed the Citizen Measure, HAC will vigorously assert its rights to due process, to compel the city to comply with CEQA, and ensure that an invalid measure does not confuse and divide the pro-housing vote.

A handwritten signature in black ink, appearing to read "Corey Smith".

Corey Smith, *Executive Director*
Housing Action Coalition (HAC)

CC:

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