

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

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BY _____

October 26, 2023

San Francisco Land Use and Transportation Committee
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

RE: Constraints Reduction Ordinance – Letter of Technical Assistance

Dear Land Use and Transportation Committee:

The California Department of Housing and Community Development (HCD) is aware of recent amendments made to the proposed Constraints Reduction Ordinance (Ordinance), which seeks to implement fully or partially some of San Francisco's housing element commitments. The purpose of this letter is to provide technical assistance to the City and County of San Francisco (City). HCD previously sent a Letter of Support and Technical Assistance on June 16, 2023, to both the Planning Commission and Board of Supervisors regarding this Ordinance.

While HCD shares the City's goal of maintaining family housing in San Francisco and understands the challenges in addressing the needs of various stakeholders, HCD has concerns about exempting the Family Housing Opportunity Special Use District (SUD) from the Constraints Reduction Ordinance, as proposed. San Francisco's adopted and compliant housing element does not contemplate this carve-out for the SUD. As outlined below, the proposed amendments to the Ordinance may impact the City's implementation of key housing element Actions that the City committed to in its adopted housing element by exempting the SUD from some of the amendments to the City's code and processes. As a result, the proposed amendments may be inconsistent with the City's obligations under Housing Element Law (Gov. Code, § 65580 et seq.) and Affirmatively Further Fair Housing (AFFH) (Gov. Code, § 8899.50).

Proposed Ordinance and Housing Element Implementation

The fulfillment of the following housing element Actions would likely be compromised by the proposed amendments because those Actions do not exempt the SUD:

- Action 7.2.6 includes a requirement that the City "[p]ermit group housing broadly throughout the city, particularly in zones allowing single-family uses, increase group housing density permitted in these districts, and remove Conditional Use Authorizations or other entitlement barriers to group housing. Changes should

focus on special needs groups, including those with disabilities, by ensuring that intermediate care facilities or congregate living health facilities, with six or fewer residents are treated no differently than other by-right single-family housing uses as required in Health and Safety Code sections 1267.8, 1566.3, and 1568.08.”

- Action 8.3.3 includes a requirement that the City “[e]valuate open space and exposure standards to reduce the number of projects seeking exceptions on typical lot conditions, for instance by removing the inner court five-foot setback at each level requirement under Planning Code Section 140....”
- Action 8.4.10 requires that the City “[r]emove Conditional Use Authorizations where required to achieve greater height for a housing project or replace height and bulk districts that require Conditional Use Authorizations to exceed the base height with one that allows the current maximum height....”
- Action 8.4.11 requires that the City “[r]educe the minimum lot size to 1,200 square feet and minimum lot width to 20 feet for proposed projects that net at least one housing unit.”
- Action 8.4.17 includes a requirement that the City “[r]emove neighborhood notification requirements for projects outside of Priority Equity Geographies that are code complying, net at least one housing unit, and only expand the rear or side of an existing building and for all non-discretionary ministerial projects.”

Furthermore, HCD notes that prior amendments to Planning Code Section 121.1, specifically 121.1(b)(1) and (2), appear to introduce subjective design review standards into the Planning Code. Subjective requirements such as “compatible with the existing scale of the district” and “contribute to the positive visual quality of the district” are contrary to the housing element Actions in 8.3 (Objective Design Standards & Findings) and could be contrary to the requirement for objective standards and criteria in the Housing Accountability Act (see Gov. Code, § 65589.5, subs. (f)(1) and (j)(1)). “Objective” standards are those “involving no personal or subjective judgment by a public official and [are] uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.” (Gov. Code, § 65589.5, subd. (h)(8).)

San Francisco Housing Policy and Practice Review

As you are aware, on October 25, 2023, HCD released the San Francisco Housing Policy and Practice Review (Review). That report includes 18 Required Actions and 10 Recommended Actions needed to address key findings of the Review. Some of the actions would be implemented, at least in part, in the draft Ordinance as originally proposed without exempting the SUD from key housing element commitments. As a result, the SUD and amendments to Planning Code Section 121.1 could undermine the City’s efforts to implement the Required Actions outlined in the Review, including, but not limited to, Actions 1.4 and 1.10, and compromise the City’s ability to address findings related to discretionary permitting processes and other procedural complexities.

HCD also reminds the City of Recommended Action 6.2, and the related housing element Action 8.4.19, which recommends ensuring that any revisions to the Planning Code simplify or reduce the rules applied to housing projects.

Conclusion

To ensure consistency with the City's housing element and the relevant Actions in the Policy and Practice Review, HCD encourages the City to adopt the Constraints Reduction Ordinance as originally proposed. HCD welcomes continued collaboration with the City on meeting its housing goals and is available to provide technical assistance on this topic and ensure the goals of the amendments are met without deviating from the City's commitments in the housing element and the Policy and Practice Review.

HCD appreciates the opportunity to provide information, assist the City in its decision making, and ensure the City is meeting important statutory requirements. Please feel free to contact Fidel Herrera, of our staff, at fidel.herrera@hcd.ca.gov with any questions or additional information.

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