

BOARD of SUPERVISORS



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MEMORANDUM

Date: December 20, 2023

To: Anne Pearson, Deputy City Attorney
Tom Paulino, Office of the Mayor

From: *ACC* Angela Calvillo, Clerk of the Board, Board of Supervisors

Subject: Urging the City Attorney and the Mayor to Respond to HCD's "Policy and Practice Review" by Seeking Extensions of Deadlines for Required Actions, and Certain Revisions and Corrections; and Setting City Policy for Implementation of the Housing Element (File No. 231175)

On December 5, 2023, the Board of Supervisors adopted Resolution No. 572-23, sponsored by Supervisor Peskin (File No. 231175, Urging the City Attorney and the Mayor to Respond to HCD's "Policy and Practice Review" by Seeking Extensions of Deadlines for Required Actions, and Certain Revisions and Corrections; and Setting City Policy for Implementation of the Housing Element) enacted on December 15, 2023.

The Board of Supervisors directs the Clerk of the Board to forward Resolution No. 572-23 to your attention.

If you have any questions or concerns, please contact the Office of the Clerk of the Board at (415) 554-5184.

c: Members of the Board of Supervisors, Supervisors Peskin, Chan, Mandelman, Preston
Eileen F. Mariano, Office of the Mayor
Andres Power, Office of the Mayor

jec:vy;

AMENDED IN COMMITTEE

11/27/2023

FILE NO. 231175

RESOLUTION NO. 572-23

1 [Urging the City Attorney and the Mayor to Respond to HCD's "Policy and Practice Review" by
2 Seeking Extensions of Deadlines for Required Actions, and Certain Revisions and
3 Corrections; and Setting City Policy for Implementation of the Housing Element]

4 **Resolution urging the City Attorney and the Mayor to request that the State Department**
5 **of Housing and Community Development (HCD): 1) extend the deadlines for Required**
6 **Actions in HCD's Policy and Practice Review to ensure that all of San Francisco's**
7 **extensive, collaborative work to further housing development does not lead to de-**
8 **certification of San Francisco's adopted Housing Element; 2) revise and correct HCD's**
9 **Policy and Practice Review to be consistent with all policies in San Francisco's**
10 **adopted Housing Element, including its policies and actions related to affordable**
11 **housing and equity, as well as the City's legal obligations to affirmatively further fair**
12 **housing, and to be consistent with San Francisco's status as a Charter City imbued**
13 **with the power of local action over municipal affairs; and setting forth that as part of**
14 **the City's Housing Element implementation, it is the policy of the City to address the**
15 **dual goals of production of new housing as well as the preservation of existing**
16 **housing.**

17
18 WHEREAS, On February 1, 2023, California's Department of Housing and Community
19 Development (HCD) certified San Francisco's Housing Element, finding it fully compliant with
20 State Housing Element Law; and

21 WHEREAS, Since then, both the Mayor and the Board of Supervisors have introduced
22 multiple Ordinances proposing changes to the City's land use and housing policies to advance
23 and conform to the goals in the City's Housing Element, including several significant
24 Ordinances that have already been adopted to "reduce constraints" for market rate housing,
25 specifically Board File Nos. 230026 (increasing density on certain single-family

1 parcels); 230374 (streamlining review of site permits); 230764, 230769 and 230855 (reducing
2 inclusionary and other impact fees); and 230732 (facilitating housing in the downtown area),
3 which are hereby declared to be a part of this resolution as if set forth fully herein; and

4 WHEREAS, San Francisco's Housing Element is the first to center racial and social
5 equity in the formation of its housing goals and land use actions, and successful
6 implementation will require a coordinated, interlocking, and balanced set of actions; and

7 WHEREAS, San Francisco exceeded its market rate housing production goals in prior
8 Regional Housing Needs Assessment (RHNA) cycles, although it failed to produce more than
9 half of its affordable housing production goals in those same cycles; and

10 WHEREAS, San Francisco will not be able to achieve its 2023-2031 affordable housing
11 production goals with a singular focus on private development policies and practices without
12 sufficient measures to address racial equity, fair housing practices, affordability, and
13 displacement; and HCD's singular focus on efforts to streamline market rate development
14 may even exacerbate the City's affordability crisis; and

15 WHEREAS, San Francisco is a Charter City with authority over municipal affairs and
16 the power to take local action as long as the action is not inconsistent with the City's Charter,
17 the California or United States Constitutions, and state laws that address matters of statewide
18 concern; and

19 WHEREAS, HCD published a document entitled "San Francisco Housing Policy and
20 Practice Review" (Policy and Practice Review) and transmitted it to San Francisco on
21 October 25, 2023; and

22 WHEREAS, In the Policy and Practice Review, HCD imposes deadlines for Required
23 Actions that mandate changes to local laws and actions within time periods that may conflict
24 with or are contrary to San Francisco's Charter and other local and state laws; and
25

1 WHEREAS, Some timelines imposed by the Policy and Practice Review are as short
2 as 30 days, which is not sufficient time to accommodate the City's obligation to consider and
3 address the potential adverse impacts such actions would impose on the urgent need to
4 preserve and enhance existing rent-controlled housing, retain neighborhood small
5 businesses, provide job opportunities, consider the workforce represented by organized labor,
6 and to protect communities at greater risk and disproportionately impacted by displacement,
7 particularly Black, Indigenous and people of color (BIPOC), as well as other critical needs of
8 San Francisco's residents; and

9 WHEREAS, The City committed to implementing many of the required actions in the
10 Policy and Practice Review as part of its certified Housing Element, but the Policy and
11 Practice Review purports to create shorter time frames to accomplish those same actions;
12 and

13 WHEREAS, The Policy and Practice Review states that failure to implement the
14 required actions in the time frames specified therein will cause HCD to initiate the process to
15 de-certify the City's Housing Element and additional enforcement action; and

16 WHEREAS, The Policy and Practice Review directs the City to disregard certain local
17 laws, including voter adopted amendments to the General Plan and Planning Code; and

18 WHEREAS, HCD has de-certified other jurisdiction's Housing Elements under a
19 substantial compliance standard; and

20 WHEREAS, De-certification of a Housing Element would trigger various consequences,
21 including the loss of state funding, and the "Builders Remedy," which is recently proving to
22 reduce, rather than increase, the number of housing units developers are building in San Jose
23 and surrounding areas; and

1 WHEREAS, De-certification of San Francisco's Housing Element would diminish the
2 construction and building trades' ability and rights to negotiate project labor agreements,
3 leading to labor shortages and increasing disparities between wages and housing costs; and

4 WHEREAS, De-certification of San Francisco's Housing Element would deregulate
5 development of market rate housing and put the approximately 65% of San Francisco's
6 population that are renters, as well as San Francisco's historically marginalized low-income
7 communities and communities of color, at heightened risk of displacement; and

8 WHEREAS, San Francisco's RHNA goal of over 82,000 housing units is based in large
9 part on the Association of Bay Area Governments' Final RHNA Plan methodology, which
10 allocates almost half of the regional housing need based on the factors related to job
11 proximity, and results in jurisdictions with the most access to jobs – such as San Francisco -
12 experiencing higher growth rates from their RHNA allocations than other jurisdictions in the
13 region – such as Marin County, but the Policy and Practice Review fails to consider the
14 changes in regional work patterns due to the COVID-19 pandemic and the ability for many
15 employees to work from home; and

16 WHEREAS, Since the certification of San Francisco's Housing Element, the State has
17 adopted two legislative interventions designed to increase and streamline the production of
18 housing – Senate Bill 423 (SB 423) and Assembly Bill 1114 (AB 1114); and

19 WHEREAS, SB 423, included a late-in-the-process amendment specially requiring San
20 Francisco, as the only jurisdiction out of California's 58 counties, to report its RHNA progress
21 each year, while other jurisdictions are subject to the general requirement that RHNA
22 progress be reviewed every four years, which will ultimately force San Francisco out of
23 compliance with its RHNA goals, requiring San Francisco to ministerially approve certain
24 housing projects in 2024; and
25

1 WHEREAS, AB 1114 will impose stringent deadlines for review of “postentitlement
2 phase permits,” as that term is defined, and limit appeals of those types of permits, and will
3 also address several of the Required Actions listed in the Policy and Practice Review; and

4 WHEREAS, De-certification of San Francisco’s Housing Element will lead to the
5 displacement of low-income residents, renters, and seniors, which the City has a vested
6 interest in protecting and advocating for, which is why San Francisco has adopted as a city
7 priority policy protection of San Francisco residents from displacement; and

8 WHEREAS, De-certification of San Francisco’s Housing Element will jeopardize San
9 Francisco’s ability to access state funding for transit infrastructure and affordable housing,
10 which is contrary to the state’s overall climate goals to prioritize denser, affordable
11 development near transit; and

12 WHEREAS, San Francisco has worked diligently to meet or exceed HCD’s requests
13 throughout the Housing Element adoption process and worked collaboratively with HCD
14 during HCD’s Policy and Practice Review investigation, despite a demonstrated pattern of an
15 inconsistent application of state law across jurisdictions and ever-changing goal posts; and

16 WHEREAS, Over 57% of the RHNA plan for this RHNA cycle (which has greatly
17 inflated production mandates over prior RHNA cycles) is targeted to three income categories
18 that are “below market,” but HCD has not provided any new resources for assisting in the
19 accomplishment of these affordable housing mandates, most notably funding; and

20 WHEREAS, HCD’s Policy and Practice Review fails to acknowledge the legal
21 requirements of AB 686 (2018) to “affirmatively further fair housing,” and ignores
22 Section 65584(d)(5) of the Government Code, which specifically provides that the RHNA plan
23 shall further clear objectives, including affirmatively furthering fair housing, but HCD’s review
24 does not address the displacement of low-income, BIPOC, Seniors, and disabled San
25 Franciscans; and

1 WHEREAS, HCD's Policy and Practice Review ignores Section 65584(d)(1) of the
2 Government Code that specifically provides that the RHNA plan shall further the objective of
3 "[i]ncreasing the housing supply and mix of housing types, tenure, and affordability in all cities
4 and counites within the region in an equitable manner, which shall result in each jurisdiction
5 receiving an allocation of units for low- and very low-income households," and de-certification
6 of San Francisco's Housing Element and imposition of the "Builder's Remedy" could box San
7 Francisco into only prioritizing the lucrative development of market-rate housing, which is in
8 contravention of the mandate for equitable distribution in the region; and

9 WHEREAS, San Francisco's Housing Element has several priority Implementing
10 Actions that are specifically intending to Affirmatively Further Fair Housing, such as Actions
11 1.1.2, 1.1.3, 1.1.14, 1.1.15, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.8, 1.4.6, 1.4.7, 1.5.2, 1.5.4, 1.5.5,
12 1.7.1, 1.7.4, 1.7.5, 1.7.7, 1.7.8, 1.7.9, 1.7.11, 2.1.1, 2.1.2, 2.1.4, 2.1.5, 2.1.7, 2.2.1, 2.2.2,
13 2.2.4, 2.2.8, 2.2.9, 2.3.1, 2.3.3, 2.3.4, 2.4.1, 2.4.2, 2.4.3, 2.4.4, 4.1.1,4.1.2, 4.1.3, 4.1.4, 4.1.5,
14 4.1.9, 4.2.1, 4.2.5, 4.4.2, 4.5.1, 4.5.5, 4.5.12, 5.2.1, 5.2.2, 5.2.3, 5.2.4, 5.2.6, 5.3.2, 5.3.3,
15 5.4.1, 5.4.7, 5.4.8, 5.4.9, 6.1.2, 6.2.1, 6.3.1, 6.3.3, 6.3.6, 6.3.9, 7.4.3, 8.4.21, 8.6.2, 8.6.7,
16 8.6.10; and

17 WHEREAS, HCD's Policy and Practice Review appears to blame the slow rate of
18 development permits and applications in 2023 entirely on San Francisco's review and
19 approval process, which analysis is incomplete, as it ignores the market realities of declining
20 market rate demand, high interest rates, lack of financing, and other labor and development
21 costs that are completely independent of San Francisco's approval processes; and

22 WHEREAS, It is a City priority to retain and provide housing affordable to members of
23 the City's workforce so they may live and work in San Francisco consistent with
24 Section 65584(d)(3) of the Government Code, which specifically says the RHNA plan shall
25 promote an improved intraregional relationship between jobs and housing, including an

1 improved balance between the number of low-wage jobs and the number of housing units
2 affordable to low-wage workers in each jurisdiction; however, HCD's Policy and Practice
3 Review ignores Section 65584(d)(3) and the threatened de-certification of San Francisco's
4 Housing Element and imposition of the "Builder's Remedy" would undermine this San
5 Francisco priority; and

6 WHEREAS, HCD's Policy and Practice Review fails to acknowledge that more
7 than 60,000 housing units have been documented by the City as sitting vacant in San
8 Francisco, and while more than 50,000 housing units have been entitled, these projects have
9 not moved into construction because of a lack of financing and equity lending, not due to any
10 City zoning or local discretionary review process; now, therefore, be it

11 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
12 urges the City Attorney and the Mayor, on behalf of the City, to request that HCD extend the
13 deadlines for Required Actions in HCD's Policy and Practice Review to ensure that all of San
14 Francisco's extensive, collaborative work to further housing development does not lead to de-
15 certification of San Francisco's adopted Housing Element; and, be it

16 FURTHER RESOLVED, That the Board of Supervisors of the City and County of San
17 Francisco urges the City Attorney, on behalf of the City, to ask HCD to revise and correct the
18 Policy and Practice Review so it is responsive to the adopted San Francisco Housing
19 Element, including its actions on preserving existing affordable housing and fostering racial
20 and social equity, as well as responsive to the City's legal obligations to affirmatively further
21 fair housing, and San Francisco's status as a Charter City imbued with the power of local
22 action over municipal affairs; and, be it

23 FURTHER RESOLVED, That as part of the City's Housing Element implementation, it
24 is the policy of the City to address the dual goals of production of new housing as well as the
25 preservation of existing housing; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors of the City and County of San
2 Francisco requests that HCD partner with the City to draft a review of joint local - state actions
3 to advance policies, tools, and financial and resource investments to achieve the affordable
4 housing goals in the 2023-2031 RHNA cycle; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors of the City and County of San
6 Francisco directs the Clerk of the Board to transmit this Resolution to the City Attorney, the
7 Mayor, the City Lobbyist, and the State Legislative Delegation upon final passage.

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City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 231175

Date Passed: December 05, 2023

Resolution urging the City Attorney and the Mayor to request that the State Department of Housing and Community Development (HCD): 1) extend the deadlines for Required Actions in HCD's Policy and Practice Review to ensure that all of San Francisco's extensive, collaborative work to further housing development does not lead to de-certification of San Francisco's adopted Housing Element; 2) revise and correct HCD's Policy and Practice Review to be consistent with all policies in San Francisco's adopted Housing Element, including its policies and actions related to affordable housing and equity, as well as the City's legal obligations to affirmatively further fair housing, and to be consistent with San Francisco's status as a Charter City imbued with the power of local action over municipal affairs; and setting forth that as part of the City's Housing Element implementation, it is the policy of the City to address the dual goals of production of new housing as well as the preservation of existing housing.

November 27, 2023 Land Use and Transportation Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

November 27, 2023 Land Use and Transportation Committee - CONTINUED AS AMENDED

December 04, 2023 Land Use and Transportation Committee - RECOMMENDED AS COMMITTEE REPORT


December 05, 2023 Board of Supervisors - ADOPTED

Ayes: 8 - Chan, Mandelman, Melgar, Peskin, Preston, Ronen, Safai and Walton

Noes: 3 - Dorsey, Engardio and Stefani

File No. 231175

I hereby certify that the foregoing Resolution was ADOPTED on 12/5/2023 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo
Clerk of the Board


Unsigned

12/15/2023

London N. Breed
Mayor

Date Approved

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, or time waived pursuant to Board Rule 2.14.2, became effective without her approval in accordance with the provision of said Section 3.103 of the Charter or Board Rule 2.14.2.



Angela Calvillo
Clerk of the Board

12/15/2023

Date