



December 21, 2023

Mr. David Zisser
Assistant Deputy Director
Local Government Relations & Accountability
Housing Policy Development Division
California Department of Housing and Community Development
2020 W. El Camino Avenue, Suite 552
Sacramento, CA 95833
via email to David.Zisser@hcd.ca.gov

Re: HCD's November 28, 2023 "Corrective Action Letter" and Additional PPR Updates

Dear Assistant Deputy Director Zisser,

We are in receipt of your November 28 Corrective Action Letter ("the Letter") that includes your most recent findings regarding San Francisco's work to advance housing production in view of the California Department of Housing and Community Development's ("HCD") San Francisco Housing Policy and Practice Review ("PPR"). We appreciate that you share our commitment to rapidly implementing the programs and policies contained in the City's Housing Element that HCD certified earlier this year.

This letter (1) updates you with the City's progress toward satisfying PPR items identified in the Letter, (2) offers additional descriptions of our previous actions to advance housing production, as requested in the Letter, and (3) provides information regarding the two PPR actions with January implementation timelines.

We are confident that the many steps we've already taken further our shared housing goals and resolve the outstanding items in the Letter. As requested, we also provide additional explanation to clarify and highlight the ways in which the City's efforts satisfy the PPR's benchmarks.

Below, we provide an update on each of the four PPR actions identified in the Letter.

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 Letter observed that the Constraints Reduction Ordinance had not yet completed the adoption process and remarked that HCD had not fully reviewed then-proposed amendments to the Ordinance, including provisions maintaining Planning Commission review of projects that included demolition of certain historic buildings.

Since receiving the Letter, the Board of Supervisors (“the Board”) further amended the Ordinance to narrow the number and type of historic buildings which will require Commission review. As amended, Commission review will only apply to projects proposing to demolish buildings that were constructed before 1923 and that are Historic Buildings under Planning Code Section 102, which follows the definition of historic in the California Environmental Quality Act (“CEQA”).

The Ordinance was approved by the Board on first reading on December 5, finally passed by the Board on December 12, and signed into law by Mayor Breed on December 14.

Action 1.2 **Eliminate Planning Commission hearings for all code-compliant housing development in all locations outside of Priority Equity Geographies. This program is past due in the housing element, with an implementation date of July 31, 2023.**

The Letter asked that we “further describe how various portions of the [Constraints Reduction] Ordinance or other measures work together to implement this action.”

In addition to the information already provided to HCD by the Planning Department in our letter dated November 21, 2023, we offer the following details about how the Constraints Reduction Ordinance eliminates Planning Commission hearings. Prior to the Constraints Reduction Ordinance, Conditional Use Authorizations were among the primary reasons for Planning Commission review of housing projects. Other processes, such as Large Project Authorizations or the need to make findings required by State Density Bonus law also required Planning Commission hearings. The Constraints Reduction Ordinance removes Conditional Use Authorizations, Large Project Authorizations, and State Density Bonus approvals for most new projects outside of the Priority Equity Geographies, as described below:

Planning Commission hearings for Conditional Use Authorizations have been eliminated for: (1) large-lot developments in Neighborhood Commercial Districts outside of the Priority Equity Geographies (Planning Code § 121.1); (2) buildings that exceed certain heights, even when those heights were lower than those allowed under the applicable Height and Bulk District (§§ 132.2, 209.1, 209.2, 253-253.3); (3) any project using the State Density Bonus law; (4) additional density for larger lots in RH Districts (§ 209.1); (5) requests for double-density for Senior Housing in certain circumstances (§§ 202.2, 207); and (6) projects proposing to demolish existing single-family housing where the project leads to a net increase in residential units, except in cases involving tenant displacement or certain historic buildings (§ 317).

Other hearings have been eliminated for: (1) all other entitlements for projects using the State Density Bonus law, including the hearing to make findings under the State Density Bonus law (§ 206.6); and (2) reasonable accommodations for people with disabilities, which in many cases previously required a Zoning Administrator hearing (§ 305.1).

Conditional Use Authorizations would continue to apply to Code-compliant projects outside of Priority Equity Geographies only where (1) there is a change in use or demolition a protected non-residential use (e.g., Grocery Stores, Movie Theaters, Nighttime Entertainment venues, Laundromats,

or Residential Care Facilities (§§ 202.3-202.13)¹), or (2) where a project fails to meet the criteria for demolition without a Conditional Use Authorization (e.g., for the demolition of rent-controlled units).

Together, these changes to the Planning Code will eliminate almost all Planning Commission hearings for Code-complying projects in locations outside of Priority Equity Geographies.

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.**

The Letter asked that we “further describe how various portions of the Ordinance or other measures work together to implement this action.”

As a threshold matter, as noted above, the adoption of the Constraints Reduction Ordinance eliminated numerous Planning Commission hearing requirements, thus eliminating the need for staff to prepare case reports using the above terms.

However, for non-Code compliant projects as well as the few Code-compliant housing projects that continue to require a hearing (e.g. those that that involve demolition of rent-controlled units or historic buildings), as we indicated in our November 21 letter, we have eliminated use of these phrases as requested.

For clarification, the Planning Department cannot completely disregard these criteria, as certain sections of the Planning Code require that the City make findings related to these phrases. For example, Planning Code Section 101.1(b)(2) - which was adopted by the voters in 1986’s Proposition M - requires that “existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods,” and Section 101.1(e) requires that for almost all permits that create new housing, “the City find that the proposed project... is consistent with” the policy in Section 101.1(b)(2). As such, the Planning Department cannot disregard this requirement without a voter-adopted amendment to the Code but will not rely upon the subjective criteria of “neighborhood character” or “neighborhood compatibility” to reduce the density of, or otherwise deny, a housing development project.

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.**

The Letter asks that the City confirm the Planning Commission’s delegation of authority to grant waivers and concessions to the Planning Director.

¹ The removal of a protected use in connection with a housing project is extremely uncommon. Over the last five years, only three such applications have been made, all of which involved the conversion of a residential care facility to a single-family dwelling.

The Constraints Reduction Ordinance authorizes the Planning Commission to delegate authority to the Planning Director to make findings under the State Density Bonus law for projects that do not require a Conditional Use Authorization under Planning Code Section 317 or to allow a non-residential use as part of a mixed-use project.² The Planning Commission adopted Resolution Number 21473 delegating authority to grant waivers and concessions to the Planning Director on December 14, 2023. The Resolution, attached as Exhibit A, broadly delegates the Planning Commission’s authority “to review and approve applications for Individually Requested State Density Bonus Projects under Planning Code Section 206.6 to the Planning Director for projects that do not require any additional entitlement from the Commission, unless the site was previously used for housing that was occupied by tenants and was demolished within the past 10 years.”

This limited exception from Commission delegation is tailored to further protect tenants. Under the Constraints Reduction Ordinance, the demolition of multi-family housing generally continues to require a Conditional Use Authorization except where a building was destroyed by a fire or other catastrophic event. This exception allows the Planning Commission to preserve its review of a small subset of projects where other state-mandated tenant protections do not apply and is consistent with the State policy to exempt projects on sites that were used as housing within the last 10 years from ministerial review, in programs such as SB 423 and AB 2011.

For more than 26 years, Planning Department policy – established through a Zoning Administrator Interpretation from 1996 – has prohibited the approval of any demolition permit unless the associated permit for a replacement building is simultaneously approved. The policy provides for only a single exception related to public safety, including where a building has been irreparably damaged by a catastrophic event such as a fire. In cases where such an exception is granted and tenants have been recently impacted by a demolition, maintaining Planning Commission review of subsequent development on the site will ensure that tenant-related issues associated with the demolition can still be raised in a public forum.

In addition to items in the Letter, we provide the following update on the two PPR actions with January implementation timelines.

- Action 1.1** **Revise entitlement processes to require that housing developments that conform to existing planning and zoning standards move efficiently through a local non-discretionary, ministerial entitlement process. This includes areas outside of Priority Equity Geographies and in Priority Equity Geographies and Cultural Districts where community-led strategies have defined and codified community benefits at the neighborhood or citywide level. A non-discretionary ministerial entitlement process must not, by definition, subject code-compliant housing developments to any discretionary decision making, including Publicly Initiated Requests for Discretionary Review.**

² For mixed-use projects that include a non-residential use, a Conditional Use Authorization and hearing before the Planning Commission may still be required if the particular non-residential use (e.g. a Tobacco Paraphernalia Establishment, Parking Garage, Cannabis Retailer, or Light Industrial Use) is located in a Zoning District that conditionally permits such use.

This was requested to be implemented by January 31, 2024 for projects on sites that were identified as suitable for lower-income development in the 4th and 5th cycle Housing Elements, when such projects include at least 20% of units as affordable to households earning 80% of the area median income.

In accordance with Housing Element law, the City has started to develop a non-discretionary approval process for Code-compliant projects that provide at least 20% on-site affordable units on re-used sites. Our website has already been updated to reflect the applicability of this process to these sites, and the City will be able to apply a non-discretionary approval pathway immediately. The City has already successfully implemented ministerial approvals for projects using State law (e.g. SB-35, SB-9, AB-2011), and is poised to implement SB-423's requirements as soon as they go into effect in 2024. In addition, the City will cease post-entitlement appeals of building permits in compliance with AB 1114.

- Action 1.6 Standardize recording practices amongst planning staff and increase internal tracking and public display of key planning steps, including project intake (application date, completeness determination date, notification dates, start of planning review), required public hearings (including notices and required continuances), and approvals – to allow for internal and external monitoring of entitlement processes and ensure that entitlement practices comply with relevant state laws, including the timelines set forth in the Permit Streamlining Act.

This was requested to be implemented with 90 days of the PPR's issuance.

The Department has updated its databases to track all of the project milestones referenced above, has recently implemented protocols and reporting mechanisms to improve data quality, and has updated the reports published on DataSF to include the aforementioned information. Updated nightly, this data is available at https://data.sfgov.org/Housing-and-Buildings/SF-Planning-Permitting-Data/kncr-c6jw/about_data.

- Action 3.1 Revise local practices so that projects that require ministerial approval pursuant to SB 35, State ADU Law, Housing Element Law, AB 1114, and other state housing laws cannot face any post-entitlement administrative appeals if the project complies with applicable permit standards.
- Action 3.2 Revise local rules so that all development that benefits from a local ministerial approval process, once established, does not face any post-entitlement administrative appeals.
- Action 3.3 Revise rules around administrative appeals for all post-entitlement permits, and narrow which permits are subject to additional administrative review.

These were requested to be implemented by January 1, 2024.

As we reported to you in our November 21 letter, the City will implement AB 1114, which becomes effective on January 1, 2024, and eliminates post-entitlement appeals for all building permits. In addition, under SB 423, a project's subsequent permits must be approved and processed without

unreasonable delay. The Department and Board of Appeals are working to issue guidance and update permitting practices to ensure that post-entitlement permits subject to AB 1114 proceed without being subject to appeal before the Board of Appeals, and these changes will be in effect by January 1, 2024.

The Department continues to value our ongoing partnership with HCD as we strive toward the collective goal of tackling the housing needs of the City and State. We will further report on our progress as we implement our Housing Element and address the remaining items in the PPR.

Sincerely,

A handwritten signature in black ink, appearing to read "Rich Hillis". The signature is written in a cursive style with a large, sweeping initial "R".

Rich Hillis
Director of Planning

Exhibits

Exhibit A: Planning Commission Resolution Number 21473

CC (all electronic)

Mayor London Breed
Members of the Board of Supervisors
Members of the Planning Commission
Lisa Gluckstein, Office of the Mayor
Judson True, Office of the Mayor
Director Gustavo Velasquez, HCD
Megan Kirkeby, HCD
Dori Ganetsos, HCD
Shannan West, HCD
Melinda Coy, HCD
Fidel Herrera, HCD
Lisa Frank, HCD

Exhibit A
Planning Commission Resolution Number 21473

[Resolution appears on following pages]



PLANNING COMMISSION RESOLUTION NO. 21473

HEARING DATE: DECEMBER 14, 2023

Project Name: State Density Bonus Projects Waivers and Concessions Delegation
Case Number: 2023-011168CRV
Staff Contact: Aaron D Starr, Manager of Legislative Affairs
Aaron.Starr@sfgov.org, (628) 652-7533
Reviewed by: Rich Hillis, Planning Department Director
Rich.Hillis@sfgov.org, (628) 652-7600

RESOLUTION DELEGATING AUTHORITY TO MAKE FINDINGS NECESSARY FOR WAIVERS AND CONCESSIONS UNDER THE STATE DENSITY BONUS LAW, PURSUANT TO PLANNING CODE 206.5 (THE INDIVIDUALLY REQUESTED STATE DENSITY BONUS PROGRAM) TO THE PLANNING DIRECTOR WHEN NO OTHER ENTITLEMENTS ARE REQUIRED.

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider this Resolution on December 14, 2023; and,

WHEREAS, the 2022 Housing Element was adopted by the San Francisco Board of Supervisors and signed by Mayor London Breed on January 31, 2023; and

WHEREAS, the 2022 Housing Element includes Implementing Action 8.5.2 that states “Remove Commission hearings for program-compliant State Density Bonus projects that do not require additional entitlements in consultation with California Department of Housing and Community Development (HCD);” and

WHEREAS, on April 18, 2023, Mayor London Breed introduced Board File 230446, also known as the Constraints Reduction Ordinance or the Housing Production Ordinance, which is intended to implement several of the Housing Element’s Implementing Actions, including Implementing Action 8.5.2, and includes an amendment to Planning Code Section 206.6(c)(3) allowing the Planning Director to approve applications for Individually Requested State Density Bonus projects, subject to the Commission’s delegation of its review of these projects to the Planning Director; and

WHEREAS, on June 29, 2023, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider Board File 230446, and voted to Recommend Approval with Modifications of the said Board File by Resolution 21342; and

WHEREAS, on November 27, 2023, the Board of Supervisors Land Use and Transportation Committee conducted a duly noticed public hearing at a regularly scheduled meeting to consider Board File 230446, and voted to forward the item to the Full Board of Supervisors with no recommendation as a committee report; and

WHEREAS, the Board of Supervisors passed Board File 230446 on first and second read on December 5, 2023 and December 12, 2023, respectively; and

WHEREAS, the ordinance will become effective 30 days after enactment, which occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance; and

WHEREAS, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, this Resolution has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15378 and 15060(c)(2); and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Commission has reviewed this proposed Resolution; and

WHEREAS, the Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed Resolution.

NOW THEREFORE BE IT RESOLVED, that subject to the ordinance in Board File 230446 becoming effective as described in the findings above, the Commission hereby delegates its authority to review and approve applications for Individually Requested State Density Bonus Projects under Planning Code Section 206.6 to the Planning Director for projects that do not require any additional entitlement from the Commission, unless the site was previously used for housing that was occupied by tenants and was demolished within the past 10 years.

NOW THEREFORE IT BE FURTHER RESOLVED, that the Commission directs the Planning Director to include any new State Density Bonus Projects in their weekly update to the Commission, and also directs the Planning Department to establish a webpage that includes all pending State Density Bonus Projects.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on December 14, 2023.



Jonas P. Ionin
Commission Secretary

AYES: Braun, Diamond, Koppel, Tanner

NOES: Ruiz, Imperial, Moore

ABSENT: None

ADOPTED: December 14, 2023