San Francisco Housing Policy and Practice Review

California Department of Housing and Community Development

Housing Policy Development Division

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Introduction

This San Francisco Housing Policy and Practice Review (Review) is the first of its kind conducted by the California Department of Housing and Community Development (HCD). It identifies, and seeks to remove, barriers to housing approvals and construction at all income levels. This Review includes Findings and Required Actions that San Francisco (City) must take to reform its housing approvals ecosystem and facilitate housing production and is informed by extensive quantitative and qualitative data collection and analysis. Implementing this Review's Required Actions, as mandated by San Francisco's adopted housing element and Housing Element Law, will ensure that San Francisco's housing approval policies and practices are consistent with state housing laws, follow best practices, and enable the City to facilitate housing production for residents at all income levels.

Statutory Authority for this Review

This Review was conducted in accordance with the powers conferred under Government Code section 11180 et seq., which gives HCD the authority to investigate and prosecute actions concerning all matters relating to the business activities and subjects under the jurisdiction of HCD, violations of any law or rule or order of HCD, and such other matters as may be provided by law. This authority includes, but is not limited to, the powers to inspect papers, books, accounts, documents, writings and records, hear complaints, administer oaths, issue subpoenas, propound interrogatories, take sworn testimony in connection with the authorized investigation, designate persons to serve subpoenas, and do all other things authorized under Government Code section 11180 et seq.

Why Review San Francisco?

California's Statewide Housing Plan calls for the state to act with urgency to address homelessness and housing need.[1] California needs an additional 2.5 million homes, including one million homes affordable to lower-income households, over this eight-year regional housing needs allocation (RHNA) cycle.[2] Every city and county must do its fair share to ensure that residents at all income levels have a home they can afford. Yet San Francisco stands out for several reasons.

San Francisco has the longest timelines in the state for advancing a housing project from submittal to construction.

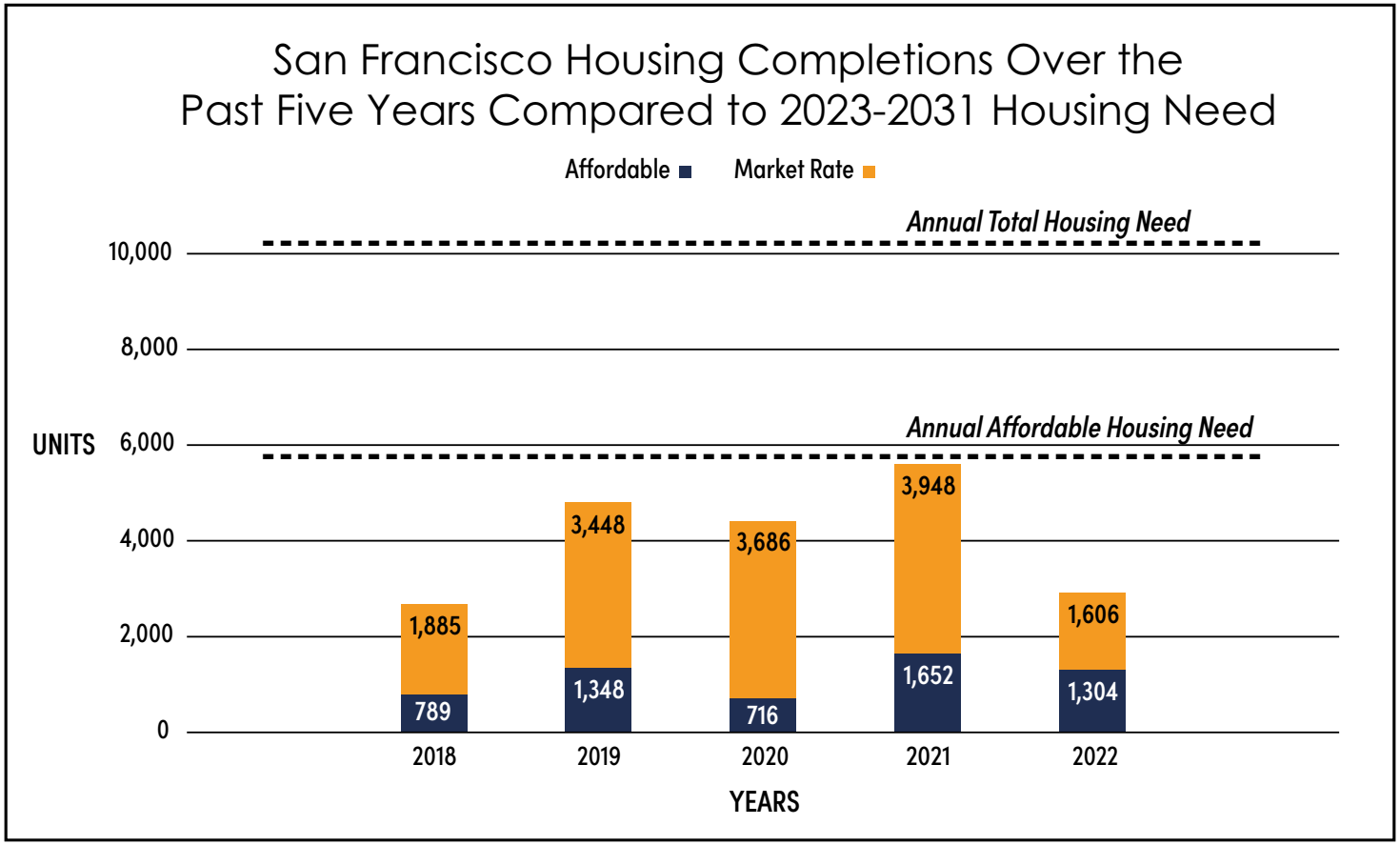
According to self-reported Annual Progress Report (APR) data and prior research from the University of California, Berkeley (UCB), San Francisco has the longest timelines in the state for advancing a housing project from submittal to construction. According to 2022 APR data, it takes an average of 523 days for a housing project to be entitled, compared to 385 days for the next slowest jurisdiction in the state.[3] It takes an average of 605 days for San Francisco to issue a building permit to an already entitled housing project, compared to 418 days in the next slowest jurisdiction.[4] Independent research by UCB found that the median entitlement timeframe for development that conforms to San Francisco's local zoning and planning requirements is over two years, and that most development was entitled in the eastern portion of the City because that is where density and use controls allowed dense housing.[5] Comparing similar code compliant developments in San Francisco and neighboring Oakland in terms of number of units, affordability, and neighborhood, San Francisco's entitlement processes took three years longer.[6]

If San Francisco's current rate of housing approvals and construction continues, the City will not meet its 6th Cycle RHNA goal.

If San Francisco's current rate of housing approvals and construction continues, the City will not meet its 6th Cycle RHNA goal – which, at 82,069 housing units, is the highest in the Bay Area region and one of the highest in the state.[7]

In order to meet its housing need, San Francisco must add 10,259 units of housing, including 5,825 affordable homes, each year through 2031.[8] As depicted in Figure 1 on the next page, this is far above San Francisco's annual average housing numbers reported in APR data over the past five years: 4,076 homes constructed, including 1,162 affordable homes. Furthermore, according to data published by the U.S. Department of Housing and Urban Development, San Francisco permitted just 179 new housing units through the first six months, or 181 days, of 2023 – a rate of less than one unit per day.[9]

FIGURE 1: COMPARISON OF CITY'S PRIOR HOUSING CONSTRUCTION TO CURRENT RHNA



Moreover, San Francisco is experiencing median rents that exceed $3,500 a month[10] and has the highest construction costs in the state.[11] In a 2020 study, the UCB Terner Center for Housing Innovation (Terner Center) found that while housing construction costs increased 25 percent over a 10-year period statewide, the Bay Area's construction costs increased 119 percent, reaching $380 per square foot in 2018.[12] In a separate 2018 study by the Terner Center, development stakeholders unanimously agreed that "the most significant and pointless factor driving up construction costs [in San Francisco] was the length of time it takes for a project to get through the city permitting and development processes."[13]

Lastly, HCD's Housing Accountability Unit (HAU) has received more complaints about potential violations of state housing laws by San Francisco than any other jurisdiction. The HAU opened 20 cases in response to such complaints, followed next by Los Angeles and Berkeley with eleven cases each.

San Francisco is an outlier on housing approvals, in part because of how it applies a blanket discretionary review process to all building permits.[14] San Francisco's housing approval processes are also notoriously complex and cumbersome, creating unpredictability and uncertainty. This results in an environment where only the most seasoned development professionals benefit from knowing how to navigate the local processes, and barriers to entry are imposed for new developers.[15]

These findings invite more questions about San Francisco's local laws and planning practices, and about San Francisco's implementation of new state housing laws intended to spur housing production at all income levels and promote equity.

Relationship of this Review to Other State and Local Efforts

HCD announced this Review in August 2022. Along the way, this Review directly informed, and was informed by, HCD's other work, including the enforcement of state housing laws and the review of San Francisco's housing element.

State Housing Law Accountability and Enforcement

HCD has statutory authority to enforce more than a dozen state housing laws to meaningfully and positively impact the provision of housing in California. In 2021, Governor Gavin Newsom created the Housing Accountability Unit (HAU) at HCD to provide technical assistance to local jurisdictions and hold them accountable for implementing state housing laws. When HCD receives a request for technical assistance or a complaint about a potential violation of state law, the HAU investigates the issue, provides technical assistance as appropriate, and escalates to enforcement, including referral to the California Office of the Attorney General, as necessary. During the course of this Review, the HAU sent seven letters to San Francisco pertaining to active cases, ranging from a Letter of Inquiry to a Notice of Violation of state housing law.

Housing Element Review and Implementation

HCD is also responsible for reviewing the housing elements of all 539 cities and counties in California for compliance with Housing Element Law, and for ensuring that local governments adopt – and then implement – plans and regulatory systems that provide opportunities for, and do not unduly constrain, housing development.[16] After providing significant technical assistance to San Francisco, including supporting the development of robust programs to remove constraints and facilitate housing production at all income levels, on February 1, 2023, HCD found the City's adopted housing element in substantial compliance with Housing Element Law.

San Francisco's adopted housing element includes three programs, or "Actions," directly related to this Policy and Practice Review, with an implementation timeline of zero to two years:

- **Action 8.8.1:** "Participate and perform data and process analysis as directed by mandatory Policy and Practice Review HCD scope and timeline."[17]
- **Action 8.8.2:** "Revise local process, procedures, and other relevant requirements to implement priority recommendations of HCD's finalized Policy and Practice Review."[18]
- **Action 8.8.3:** "Amend Housing Element, as needed, to include final actions required by outcomes of mandatory Policy and Practice Review HCD effort."[19]

Through the above Actions, San Francisco committed to addressing the findings of this Review and implementing HCD's "Priority Recommendations," which this Review refers to as "Required Actions." HCD continues to monitor San Francisco's implementation of its housing element to ensure that the programs and rezoning efforts identified are completed on time.

A housing element is not a paper exercise – it is an enforceable commitment to the state that a city or county will take specific actions on specific timeframes over an eight-year period. Once HCD finds an adopted housing element compliant with Housing Element Law, the jurisdiction must work towards implementing the housing element.

If HCD finds that a jurisdiction failed to implement a program included in the housing element, HCD may, after informing the local jurisdiction and providing a reasonable time to respond, revoke its finding of compliance with Housing Element Law until it determines that the jurisdiction has come into compliance.[20]

The City's failure to implement the Required Actions will result in HCD initiating the process to revoke housing element compliance. Various consequences may apply if the City does not have a housing element in compliance with Housing Element Law, including ineligibility or delay in receiving certain state funds, referral to the California Office of the Attorney General,[21] court-imposed financial penalties,[22] the loss of local land use authority to a court-appointed agent,[23] and the application of the "builder's remedy."[24]

Local Efforts

As HCD began this Policy and Practice Review, pursued housing accountability and enforcement actions, and provided technical assistance to bring the City's housing element into compliance with Housing Element Law, San Francisco began to rethink and revise its approach to housing approvals over the past year.[25]

San Francisco began to implement some of the Actions identified in the City's housing element, partially through Mayor London Breed's Housing for All Executive Directive, which directs City "departments to remove barriers to housing construction, reform outdated zoning restrictions, and find long-term solutions for creating more affordable housing."[26]

In addition, on July 25, 2023, the San Francisco Board of Supervisors approved the Housing Stimulus and Fee Reform Plan, lowering inclusionary housing requirements and reforming impact fees to increase financial feasibility for housing projects. Mayor Breed also introduced a "Constraints Reduction Ordinance" to implement a variety of Actions identified in San Francisco's housing element. HCD wrote a Letter of Support and Technical Assistance for this ordinance, which was sent to, and subsequently recommended for approval by, the Planning Commission. In July 2023, the San Francisco Planning Department also removed the requirement that most dense housing projects begin with a mandatory Preliminary Project Assessment (PPA) process that added, on average, a year to the application process.[27]

The City's failure to implement the Required Actions will result in HCD initiating the process to revoke housing element compliance.

While these and other local efforts, spurred by state intervention, are beginning to change the status quo of housing review and approval in San Francisco, this Review finds that there is still much to be done. This Review reinforces the importance of continuing to implement the housing element, identifies existing housing element programs that San Francisco must prioritize and revise, and provides additional Required Actions that San Francisco must take to ensure that local laws and planning practices are consistent with state housing laws and will facilitate housing production at all income levels.

Review Approach

This Policy and Practice Review addresses the following research topics:

1. At the local level, are state housing laws (including the Housing Accountability Act, Housing Crisis Act, Permit Streamlining Act, State Density Bonus Law, Senate Bill 35, and Housing Element Law) intended to promote housing production and affordability being fully implemented and are they achieving their intended effect?
2. What are the causes of delay in San Francisco's entitlement process?
3. To what extent do discretionary review processes impact overall project timelines and the housing approvals pipeline?

To address these research topics, HCD contracted with a UCB research team led by Moira O'Neill, Associate Research Scientist, to conduct an in-depth, year-long analysis of San Francisco's regulatory regime and entitlement practices. The UCB research builds upon prior studies of land use regulation in California – led by O'Neill and colleagues – known as the Comprehensive Assessment of Land Use Entitlements Study (CALES). CALES uses various quantitative, qualitative, and spatial methods and data to understand and analyze how jurisdictions apply local and state law. Using this CALES methodology, the research team analyzed San Francisco's entitlement data for projects resulting in five or more housing units from 2014-2021.

This Review includes data on 284 housing developments of five or more units of housing approved by the Planning Department. Each observation captures all available building characteristics, application, hearing, and approval data, resulting in over 300 variables per development.

This Review also includes qualitative data from conversations with local stakeholders, including city staff, appointed and elected officials, community-based organizations, housing advocates, affordable developers, market-rate developers, attorneys, and others. HCD invited all members of the San Francisco Board of Supervisors (five out of 11 participated), Planning Commission (four out of seven participated), and Historic Preservation Commission (zero out of seven participated) to engage with this work. In total, HCD convened 33 stakeholder engagement sessions with approximately 146 participants, and UCB conducted additional in-depth confidential research interviews with 24 participants that HCD did not take part in.

For more details on the specific research methods used in this study, and report findings, please refer to UCB's full academic report – *Examining Local Law, Policy and Planning Practice on Development in San Francisco using CALES, in support of the San Francisco Policy and Practice Review.*

Key Findings

Based on the quantitative and qualitative research and analysis conducted by the UCB research team, specific Review findings include the following:

Inconsistencies with State Laws

1. **San Francisco's local rules around discretionary permitting and post-entitlement appeals prevent full implementation of the goals and aims of state housing laws.** This includes two aspects of local law that impact procedural rules, existing planning practices, and zoning standards: (1) a provision in the City's Business and Tax Code that renders all permits discretionary,[28] and (2) a Charter provision that the City interprets to allow for appeals of all permits, including post-entitlement permits. These both serve as major procedural constraints on housing production, including affordable production.

2. **Post-entitlement practices impacting SB 35 projects are noncompliant with state laws.** San Francisco's application of SB 35 does not resolve post-entitlement hurdles – of which there are many. San Francisco's local rules block full implementation of SB 35 by allowing related post-entitlement permits to face subjective administrative appeals of ministerially approved affordable housing developments.

3. **Application intake processes do not comply with the Permit Streamlining Act (PSA) but have improved marginally over time** in terms of tracking and making notifications publicly accessible. Though San Francisco Planning did not systematically meet PSA notification deadlines for entitlements issued through 2021, it appears the Planning Department is better situated to track the data to monitor its performance in this area.

4. **Local rules require entitlement processes to begin before formal application submittal,** even with recent changes to planning practices eliminating the Preliminary Project Assessment process, and to navigate multiple hurdles along the way to approval and eventual construction.

5. **Subjective and vague Design Guidelines and other design standards and conditions of approval frustrate the Housing Accountability Act** requirements for objective standards.

6. **Planners and developers reported that the City's political bodies apply local rules in a way that signals they do not understand how state law limits their discretion** in the area of State Density Bonus Law and the Housing Accountability Act.

7. **The City's discretionary, subjective approvals process for large, code-compliant housing projects, including Eastern Neighborhoods (ENX) and Downtown Large Project Authorization (DNX), is inconsistent with the Housing Accountability Act** requirements for objective standards.

8. The City's application of the Affordable Housing Fee, and Inclusionary Affordable Housing Program requirements, **impose a fee on affordable units in contravention of State Density Bonus Law, and impermissibly penalize developers for utilizing State Density Bonus Law.**

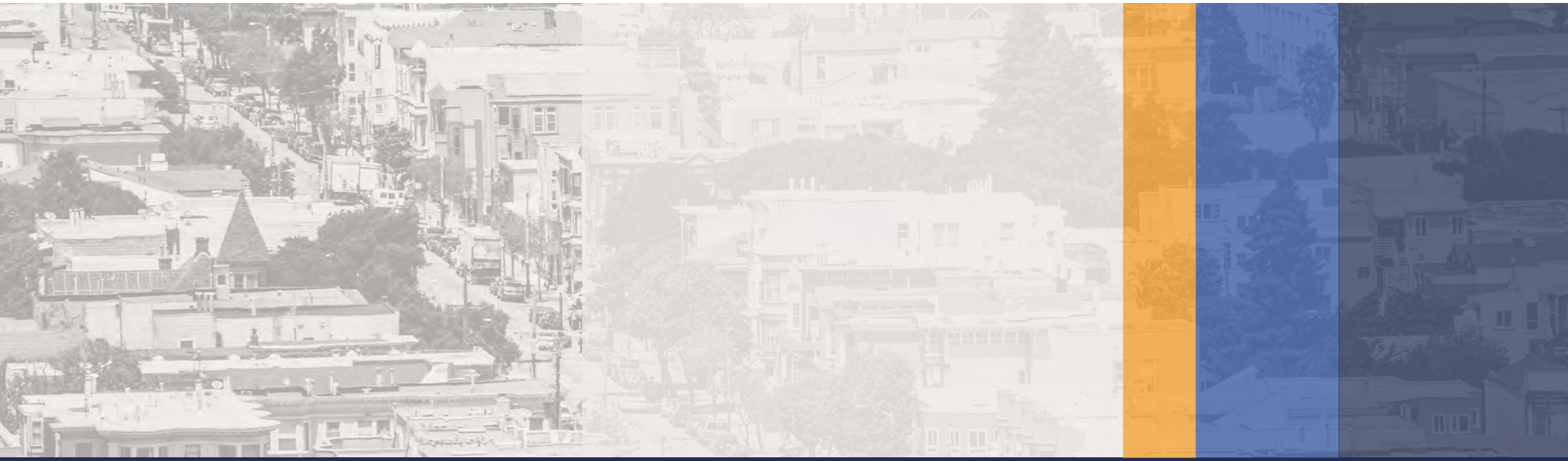
Historic Inequities in Planning and Zoning Decisions

9. **San Francisco's past planning and zoning practices created major inequities across San Francisco in terms of which neighborhoods would host the majority of the City's housing density and affordability.** Stakeholders report that the City's response to its historic failure to engage communities, particularly vulnerable neighborhoods, during planning and zoning has been to increase process at the project-level.

    a. In theory, adding process at the individual project entitlement and permitting level allows groups without power to shape zoning to advocate for their neighborhood needs before a development is built. But stakeholders share that "affluent NIMBYs" can, and do, weaponize these process requirements to block housing. This approach has largely left the inequitable zoning map and planning regulations intact while also nurturing project-level disputes that constrain housing approval and production timelines and numbers.

    b. The consequence is that San Francisco underproduces housing citywide and concentrates nearly all production in the same neighborhoods, thus exacerbating existing conflicts over land use.

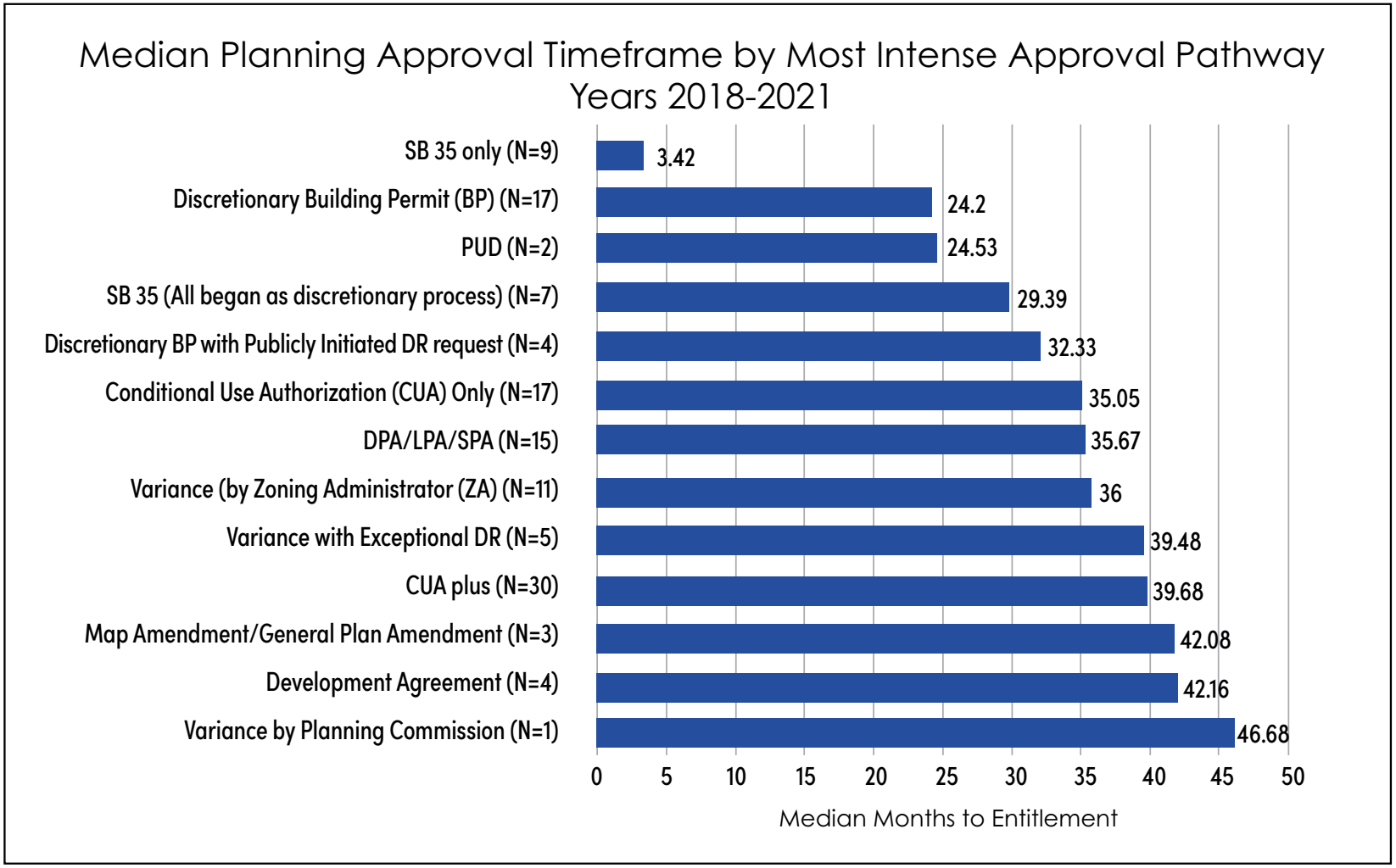
10. **It is critical to codify community needs at the neighborhood planning level while creating a local ministerial (non-discretionary) process for code-compliant development at the project level** if San Francisco is ever to meet its production requirements while also advancing housing equity.



Senate Bill 35 and Overall Affordability Trends

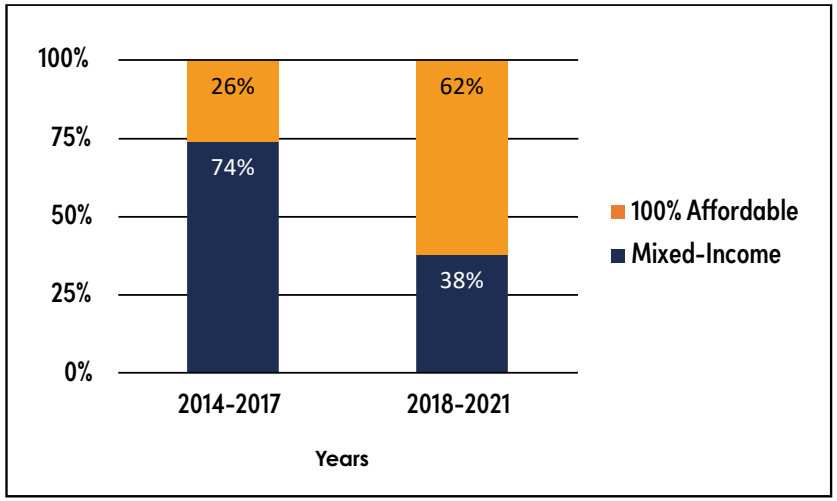
11. **A ministerial process like Senate Bill (SB) 35 is a fix to planning approval in San Francisco**, with the median SB 35 project moving through the Planning Department in just 3.42 months, compared to two years (or longer) for non-SB 35 projects, demonstrating that with discretionary hurdles out of the way, San Francisco can approve projects quickly.

FIGURE 2: PLANNING APPROVAL TIMEFRAME BY MOST INTENSE APPROVAL PATHWAY (2018-2021)



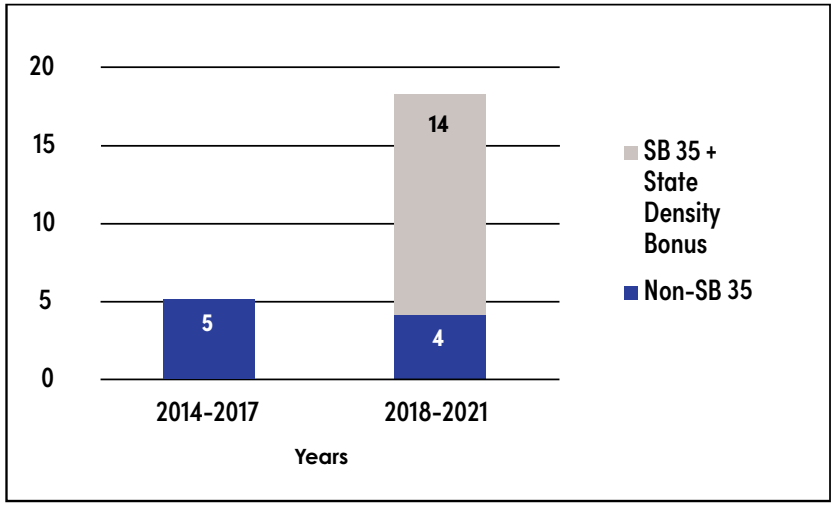
12. **Before SB 35, nearly three out of every four affordable units entitled came through the City's inclusionary housing program, but SB 35 changed that trend in 2018-2021.** Very few units in the earlier years of study came through 100 percent affordable developments. Affordable developers reported that SB 35 and State Density Bonus Law were critical to creating opportunity for more 100 percent affordable developments, which in turn shifted the distribution of what types of development (mixed-income or 100 percent affordable development) occurred in the years following SB 35's enactment, though implementation – particularly for State Density Bonus Law – was bumpy.

FIGURE 3: PERCENT OF AFFORDABLE UNITS APPROVED BY PLANNING BY DEVELOPMENT TYPE



13. **Affordable developers said that SB 35 and State Density Bonus Law were essential to increase financial feasibility and certainty of getting through onerous planning review processes,** and the data bears this out. Nearly all developments that benefit from SB 35 also rely on State Density Bonus Law to increase the number of affordable units offered.

FIGURE 4: NUMBER OF 100% AFFORDABLE DEVELOPMENTS APPROVED BY PLANNING*



**There is one project not included in this graph that could be counted as an SB 35 + State Density Bonus development based on data from the Department of Building Inspection, but planning data is unclear.*

14. **Developers shared that the inclusionary program's on-site and fee requirements were difficult to meet and discouraged development, and the data bears this out.** There were more smaller market-rate developments in the later years (2018-2021) that were below the inclusionary housing program's unit threshold. It is important to note that the inclusionary thresholds were much lower in the years leading to 2014-2017 entitlements. Because fully funding the affordable housing needed through government subsidies is prohibitively expensive, leveraging market-rate development to create affordable housing through inclusionary zoning (i.e., mixed-income housing) is one key strategy for producing housing at all income levels. Thus, San Francisco should continue to pursue strategies that both maximize affordability and ensure that projects are financially feasible.[29]

Problematic Local Implementation of the California Environmental Quality Act (CEQA)

15. **Local rules – not state law or CEQA Guidelines – require additional CEQA studies,** even as Planning Department policies rely heavily on CEQA exemptions. These additional studies add more work, cost, and risk to the environmental review process, even for exempt developments, but are not required by state law.

16. **Risk of costly local appeals drives cautious environmental planning practices that limit the impact of the PSA.** Planners believe that project opponents abuse CEQA administrative appeals to block or delay other key project approvals. This seems to encourage planners to make environmental review determinations late in the planning review process, either when all other approvals are done or in conjunction with other approvals, even when the entitlement solely requires a CEQA exemption. The problem with this approach to environmental planning review is that it limits the PSA's effect on overall entitlement timelines because the "clock" on entitlement timelines for qualifying development does not begin before the environmental review documentation is complete.[30]

17. **Planners report that they are more fearful of scrutiny in front of the City's appointed and elected bodies than of CEQA litigation.** Environmental planners feel confident their work would survive judicial scrutiny, but administrative appeals are easy to file and create problems for planning practice even if they are withdrawn or denied. Appeals, even if withdrawn, impact staff time and capacity – administrative appeals, on average, added 20 days of staff review time to the developments in our dataset and cost the Planning Department approximately $100,000 a year to prepare for. This changes the workflow for the entire division, as environmental planners shift priorities and work to prepare for the appeal hearing. These appeals also add costs to the project proponents in the form of holding costs and added risk.

Publicly Initiated Discretionary Review

18. **Publicly Initiated Discretionary Review occurs frequently, impacting at least 20 percent of code-compliant developments** of five or more housing units not otherwise subject to a hearing with the Planning Commission, adding unnecessary public hearings and potentially fostering negotiations outside of public hearings. This differs from the perception amongst planners that Publicly Initiated Discretionary Review is not a hurdle for larger housing developments, even if the tool is used most frequently to resolve disputes over small projects – like residential decks and expansions – between neighbors. On average, the discretionary building permit that faces a request for Publicly Initiated Discretionary Review takes approximately nine months longer to get approved.

Public Hearings and Development by Negotiation

19. **Continuances of public hearings, meant to avoid later challenges through post-entitlement administrative appeals, are common.** Developers state that the City uses continuances to host informal negotiations about the project design and scope between the project applicant and project opponents. Approvals data confirms that continuances occur at a high rate.

20. **The City fails to maintain good data on problematic practices,** including continuances, appeals (basis, frequency, denials, withdrawals), and voting patterns, making internal and external continued analysis and tracking difficult.

Procedural Complexities

21. **The complexity associated with housing entitlement and permitting in San Francisco is not only a barrier to entry to new development professionals pursuing projects in the City but is also causing developers with experience in San Francisco to leave** and pursue work in neighboring jurisdictions instead.

22. **Planners report feeling fearful and overwhelmed while processing applications for housing developments,** due to both the complexities of San Francisco's local Planning Code and the threat of public scrutiny, which is amplified during public hearings.

23. **Stakeholders report persistent post-entitlement challenges,** including inadequate inter-agency coordination (particularly around utilities connections and ADA assessments), subjectivity in post-entitlement permitting that can send entitlements back to the Planning Department for more review, and inadequate supervision of and a failure to implement performance benchmarking for Department of Building Inspection staff that leads to serious variability in permitting processes that should be standardized. This lack of uniformity and transparency in the post-entitlement process sets the stage for corruption[31] [32] and distrust.

24. **Affordable housing developers report additional procedural complexities**, including the aforementioned lack of inter-agency coordination, trouble satisfying public art requirements for 100 percent affordable

housing developments, and difficulty meeting the City's local hire requirements – which some developers attribute to labor shortages.

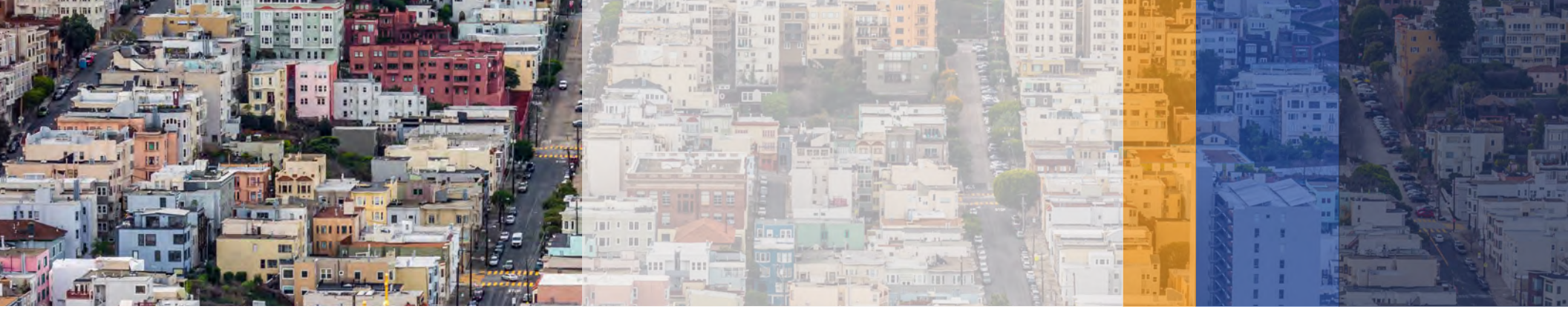
Politics and Stakeholder Disagreements

25. **Political bodies are split ideologically, limiting their progress on crafting solutions and influencing the outcomes for housing projects that come before them.** Appointed and elected officials want what they believe is best for their communities, but they are not in sync on the role of regulation, or what legal reforms would best achieve production targets, including affordable housing targets, while protecting vulnerable neighborhoods. This divide appears to limit their progress on crafting solutions.

26. **Planners and developers believe that San Francisco needs major local procedural reforms** to facilitate housing production, but not all commissioners and supervisors agree.

27. **Some stakeholders, including planners, do not have confidence that San Francisco will implement the City's housing element without substantial state intervention.**

The following section includes Required Actions that the City must take to address these Findings.



Required Actions

The Required Actions below are critical to addressing constraints to production identified in the Key Findings and, in some cases, to complying with state housing laws. Some of the Required Actions refine or accelerate San Francisco's existing housing element Actions. Implementation of the Required Actions, therefore, will have an especially significant impact on reducing housing approval timelines and increasing housing production at all income levels.

As specified in San Francisco's housing element Actions 8.8.2 and 8.8.3, the City must implement the "priority recommendations" and, as needed, amend the housing element to include "final actions" required in the Policy and Practice Review. The Required Actions constitute those priority recommendations and final actions. **Therefore, failure to implement the Required Actions will initiate HCD's process to revoke housing element compliance and may result in additional enforcement action.** HCD's enforcement process will start with a Corrective Action Letter immediately after the City misses the specified deadline for each Required Action, after which the City will have 30 days to implement the Required Action before its housing element compliance is revoked via a Decertification Letter from HCD.

Implementing these Required Actions will require intervention at various levels of City government, including, but not limited to, amendments to staff-level practices, Municipal Code amendments, and potentially changes to the City Charter. There also may be potential for state-level legislative amendments to achieve some of the below Required Actions. **To avoid enforcement action, the City is expected to work with HCD on strategies to implement these Required Actions, including receiving HCD's approval of any language used in implementing ordinances, and to report to HCD on or before the Action due date to confirm that the City has completed the Action.**

The tables below outline both high-level and specific Required Actions, as well as the timeframes that the Required Actions must be completed in, and whether the Action implicates a local Policy or Practice.

1. Eliminate Discretion and Subjectivity in Planning Review

SPECIFIC ACTIONS	TIMING	POLICY OR PRACTICE?
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.	Complete by January 31, 2024, for projects on reused 4th and 5th cycle lower-income housing element sites that are 20 percent affordable, as required by Housing Element Law.[33] Immediately initiate development of community-led strategy to determine appropriate community benefits within Priority Equity Geographies and Cultural Districts that do not yet have codified community benefits. By Fall 2026, establish a local non-discretionary entitlement pathway, with progress updates to HCD every 6 months.	**Policy** (Municipal Business and Tax Regulations Code)[i]
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.**	30 days.	**Policy and Practice** (Multiple Approaches Available)

i HCD understands that some controversy exists about whether a change to the City's Charter is also necessary and urges the City to explore this issue and potential pathways to establish a non-discretionary ministerial process for housing developments.

SPECIFIC ACTIONS	TIMING	POLICY OR PRACTICE?
1.3 Prioritize existing housing element actions surrounding Objective Design Standards & Findings, including amending and replacing the Residential Design Guidelines and Urban Design Guidelines to remove all subjective standards and requirements, and to codify current Planning Department policy rules that are not currently in the Planning Code or design guidelines.	1 year.	**Policy** (Design Guidelines and Planning Code)
1.4 Eliminate the use of "neighborhood character" and "neighborhood compatibility" terminology in case report findings and in relevant design guidelines, and remove "light" and "air" terminology in case report findings to support discretionary requests.	30 days for case report findings. 1 year for design guidelines.	**Practice and Policy** (Design Guidelines and Planning Code)
1.5 Consistent with the recent action to eliminate the Preliminary Project Assessment, ensure that no mandatory pre-application processes are required in order for a housing development project applicant to submit a preliminary application under the Permit Streamling Act.	30 days.	**Practice**

SPECIFIC ACTIONS	TIMING	POLICY OR PRACTICE?
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.	90 days. Evaluate and adjust annually.	**Practice**
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.	Pass implementing ordinance within 30 days.	**Policy** (Planning Code)

SPECIFIC ACTIONS	TIMING	POLICY OR PRACTICE?
1.8 Revise the application of the Affordable Housing Fees and Inclusionary Affordable Housing Program requirements, so as not to impose fees on affordable units for projects under State Density Bonus Law. Affordable units cannot be counted toward the total unit count for a State Density Bonus Law project in determining whether the higher Affordable Housing Fees and Inclusionary Affordable Housing Program requirements apply.	As soon as possible, but no later than 1 year.	**Policy** (Planning Code and Planning Director Bulletin No. 6)
1.9 Revise the Large Project Authorization in Eastern Neighborhoods (ENX) and the Downtown Large Project Authorization (DNX) processes to ensure approval criteria for housing projects are written and objective.	1 year.	**Policy** (Planning Code)
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.	Pass Implementing ordinance within 30 days.	**Practice and Policy** (Planning Code)

2. Reform Local California Environmental Quality Act (CEQA) Practices

SPECIFIC ACTIONS	TIMING	POLICY OR PRACTICE?
2.1 Review and revise environmental planning review practices to require CEQA exemption determinations within 30 days of receiving and accepting the project application as complete, rather than making this determination at the end of the entitlement process.	6 months.	**Practice**
2.2 Eliminate additional requirements for supplemental studies not required by CEQA statute or Guidelines, such as shadow and wind studies, in environmental review.	1 year to evaluate which local environmental review requirements are not required by CEQA statute or Guidelines. 1-3 years to eliminate additional requirements.	**Policy** (Planning Code)

3. Reform the Local Administrative Appeals Process

SPECIFIC ACTIONS	TIMING	POLICY OR PRACTICE?
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.	End subjective post-entitlement appeals immediately, and all post-entitlement appeals no later than January 1, 2024.	**Practice**

SPECIFIC ACTIONS	TIMING	POLICY OR PRACTICE?
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.	Comply with state law (AB 1114) by January 1, 2024.	**Policy** (City Charter)
3.3 Revise rules around administrative appeals for all post-entitlement permits, and narrow which permits are subject to additional administrative review.	Comply with state law (AB 1114) by January 1, 2024.	**Policy** (Business and Tax Regulations Code, City Charter)

4. Expedite and Standardize the Post-Entitlement Permitting Process

SPECIFIC ACTIONS	TIMING	POLICY OR PRACTICE?
4.1 Standardize post-entitlement review requirements and develop and measure against performance benchmarks for the permitting processes to reduce subjectivity in construction permitting. This includes publishing all post-entitlement requirements, including intake requirements, from all relevant departments included in post-entitlement reviews in checklist form. Any interpretations of relevant municipal codes applied to post-entitlement reviews must be published on the relevant department's website and consistently applied.	9 months.	**Practice**

SPECIFIC ACTIONS	TIMING	POLICY OR PRACTICE?
4.2 Analyze and reduce constraints imposed on projects receiving City funds for affordable housing development, including removing Public Art requirements for 100 percent affordable housing projects and standardizing and streamlining reviews by the Mayor's Office of Disability.	1 year.	**Policy** (Planning Code)

5. Increase Accountability and Transparency

SPECIFIC ACTIONS	TIMING	POLICY OR PRACTICE?
5.1 On developments that are ministerially approved, ensure that planning practice does not allow for city personnel to pressure project proponents into negotiations between neighborhood groups, and that all involvement by city personnel in meetings outside of public hearings comply with state law.	Notify city personnel of requirement immediately. Develop protocols to ensure continued compliance within 6 months.	**Practice**

Recommended Actions

To fully address the Findings in this Review and demonstrate that San Francisco is truly "Prohousing," San Francisco should implement the following Recommended Actions as well. Like the Required Actions above, some of these also relate to and refine existing housing element Actions and require intervention at various levels of City government. In the instances where these Recommended Actions relate to existing housing element programs, San Francisco is still required to, at a minimum, fully implement their existing housing element programs as written in the element.

SPECIFIC ACTIONS	TIMING	POLICY OR PRACTICE?
6.1 Conduct local land use planning and zoning, including upzoning, in an equitable manner such that the task of ensuring equitable development is not left to Development Agreements and project-level negotiations and adjudication.	Initiate by completing Planning Department recommendations for upzoning, consistent with the Mayor's Housing for All Executive Directive, by January 31, 2024. Complete by January 2026.	**Policy** (Planning Code and Zoning Map)
6.2 When proposing Planning Code amendments, ensure that revisions simplify or reduce the rules applied to housing projects in order to decrease the institutional or technical knowledge needed by all stakeholders involved in the housing approvals process.	Ongoing.	**Policy** (Planning Code)
6.3 Maintain practice of maximizing CEQA exemptions.	Ongoing.	**Practice**
6.4 Continue to build out Permit Center to expand oversight to, and coordinate, all permits for multifamily housing development.	Ongoing.	**Practice**

SPECIFIC ACTIONS	TIMING	POLICY OR PRACTICE?
6.5 Improve data management and public sharing of data on building permitting processes. For example, to support programmatic strategies that will expedite plan checks, revisions, and final inspections, develop accountability and tracking measures to determine average review timeframes, and identify methods to cut the timeframes. This may include updating internal permit tracking software and systems that allow all relevant City departments involved in the permitting process to access and input data about key project steps.	Ongoing.	**Practice**
6.6 Ensure project applicants are allowed to "opt in" to local programs, such as HOME SF, rather than being required to utilize the local program over programs developed by state law, such as State Density Bonus Law. When there is a pathway under state law, state law should be the default and easy to navigate.	30 days.	**Practice**

SPECIFIC ACTIONS	TIMING	POLICY OR PRACTICE?
6.7 Develop data tracking and related self-study to allow for external and internal monitoring of performance along each of the Administrative and Legislative milestones laid out in Mayor Breed's Housing for All Executive Directive, including establishing benchmarks for progress in meeting each milestone.	Increase public transparency within 6 months. Complete within 1 year.	**Practice**
6.8 Develop a system where project applicants can escalate post-entitlement permitting issues to staff dedicated to resolving these issues and expediting approvals.	6 months.	**Practice**
6.9 Revise rules around administrative appeals for CEQA determinations by requiring appeal hearings to be expedited (e.g., heard within 30 days from filing), and review filing fees and cost requirements for parties filing appeals.	9 months.	**Policy** (Administrative Code)
6.10 Expedite the timeline to conduct a pro-forma-based study on cumulative governmental constraints on housing development in San Francisco so that the study is complete by January 31, 2025. This study should include analysis of the interventions identified in the Required Actions.	Complete by January 31, 2025.	**Practice**

Conclusion and Next Steps

This Policy and Practice Review identifies barriers to housing approvals in San Francisco and provides a pathway for the City to remove them. San Francisco has perfected the art of avoiding obligations under state housing laws by maneuvering around them through local rules that exploit loopholes and frustrate the intent of state housing laws. In other instances, San Francisco's policies and practices are inconsistent with these laws. It is also clear that the City's local rules create constraints on production at all income levels and that San Francisco will not meet its housing element obligations without removing those constraints. The City's current housing element and local efforts speak to some of this but without the specificity and timeframes needed to fully address the constraints.

While some of the barriers imposed on housing developments in San Francisco are unique, many of the findings and Required Actions in this Review can serve as lessons learned and best practices for other jurisdictions, thus facilitating faster housing approvals and increased production of homes at all income levels statewide. The most important lesson for the state comes from a holistic understanding of what San Francisco's local law has done well and where it has posed obstacles to housing affordability and production. UC Berkeley's research found that San Francisco concentrated density in inequitable ways and blocked production through the complex housing approvals process. San Francisco provides an important reminder that zoning and planning is one important pathway to housing production at all income levels, but a ministerial approval process is paramount. This suggests that review of zoning and planning requirements should consider three aspects of local law: density and use constraints, the location of available zoning, and procedural rules.

San Francisco provides an important reminder that zoning and planning is one important pathway to housing production at all income levels, but a ministerial approval process is paramount.

HCD will continue to provide technical assistance to the City as it works towards fully implementing its housing element, including incorporating and completing the revisions mandated by this Policy and Practice Review. Implementing the Required Actions from this Review, in addition to actively working to implement the existing housing element, is required for San Francisco to maintain compliance with Housing Element Law.

San Francisco has an opportunity to reverse course and truly be a leader in producing housing efficiently and equitably. While state law and best practices serve as a starting point, the City should take advantage of the Findings and Actions in this Review – and the ongoing technical assistance HCD is committed to providing – to go beyond what is merely required. The stakes are too high to do anything less.

Endnotes

1 Department of Housing and Community Development. "A Home for Every Californian: 2022 Statewide Housing Plan Update." Statewide Housing Plan, Mar. 2022, available at https://statewide-housing-plan-cahcd.hub.arcgis.com/.

2 Ibid.

3 Department of Housing and Community Development. "2022 Annual Progress Report Data." Available at https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-implementation-and-apr-dashboard

4 Ibid.

5 Report to the California Air Resources Board, titled "Examining Entitlement in California to Inform Policy and Process: Advancing Social Equity in Housing Development Patterns" in fulfillment of Contract #3900-19STC005.

6 UC Berkeley discusses this in detail in the full research report.

7 FINAL REGIONAL HOUSING NEEDS ALLOCATION (RHNA) PLAN: San Francisco Bay Area, 2023-2031, available at https://abag.ca.gov/sites/default/files/documents/2021-12/Final_RHNA_Allocation_Report_2023-2031-approved_0.pdf

8 Ibid.

9 "State of the Cities Data Systems U.S. Census Bureau's Building Permits Survey." SOCDS Building Permits Database, Aug. 2023, available at socds.huduser.gov/permits/.

10 "San Francisco, CA Rental Market." Average Rental Price in San Francisco, CA Market Trends | Zillow Rental Manager, available at www.zillow.com/rental-manager/market-trends/san-francisco-ca/. Accessed 3 Aug. 2023.

11 Turner & Townsend, "International Construction Market Survey 2023" 2023, available at https://publications.turnerandtownsend.com/international-construction-market-survey-2023/

12 Raetz, Hayley, et al. "The Hard Costs of Construction: Recent Trends in Labor and Materials Costs for Apartment Buildings in California." Terner Center, Terner Center for Housing Innovation, Dec. 2020, available at www.ternercenter.

13 Reid, Carolina, and Raetz, Hayley. "Practitioners Weigh in on Drivers of Rising Housing Construction Costs in San Francisco." Terner Center Briefs, Terner Center for Housing Innovation, Jan. 2018 available at https://ternercenter.berkeley.edu/wp-content/uploads/pdfs/San_Francisco_Construction_Cost_Brief_-_Terner_Center_January_2018.pdf

14 O'Neill, Moira, Giulia Gualco-Nelson, and Eric Biber. "Developing Policy From the Ground Up: Examining Entitlement in the Bay Area to Inform California's Housing Policy Debates." (2019) https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1560&context=hastings_environmental_law_journal.

15 Ibid.

16 Gov. Code, § 65585, subd. (b)

17 2022 Update: San Francisco Housing Element, Page 147, Program 8.8: Policy and Practice Review, available at https://sfplanning.s3.amazonaws.com/archives/sfhousingelement.org/files/Housing_Element_2022_Update.pdf

18 Ibid.

19 Ibid.

20 Gov. Code, § 65585, subd. (i)(1)(A)-(B)

21 Gov. Code, § 65585, subd. (j)

22 Gov. Code, § 65585, subd. (l)(1)

23 Gov. Code, § 65585, subd. (i)

24 See Gov. Code, § 65589.5, subd. (d)(5)

25 For example, the Mayor's Executive Directive dated February 7, 2023 delineates how the City can address at least a few issues that came up during the Policy and Practice Review process, such as the elimination of the Preliminary Project Assessment requirements and revising the Inclusionary Housing requirements.

26 "Executive Directive 21-01 Housing for All, City and County of San Francisco." Feb, 2023, available at: https://sf.gov/sites/default/files/2023-02/Executive%20Directive%2023-01_Housing%20for%20All.pdf

27 Moira O'Neill et al, (2023) Examining Local Law, Policy, and Planning Practice on Development in San Francisco Using CALES, p. 35.

28 HCD understands that some controversy exists about whether a change to the City's Charter is also necessary and urges the City to explore this issue and potential pathways to establish a non-discretionary ministerial process for housing developments.

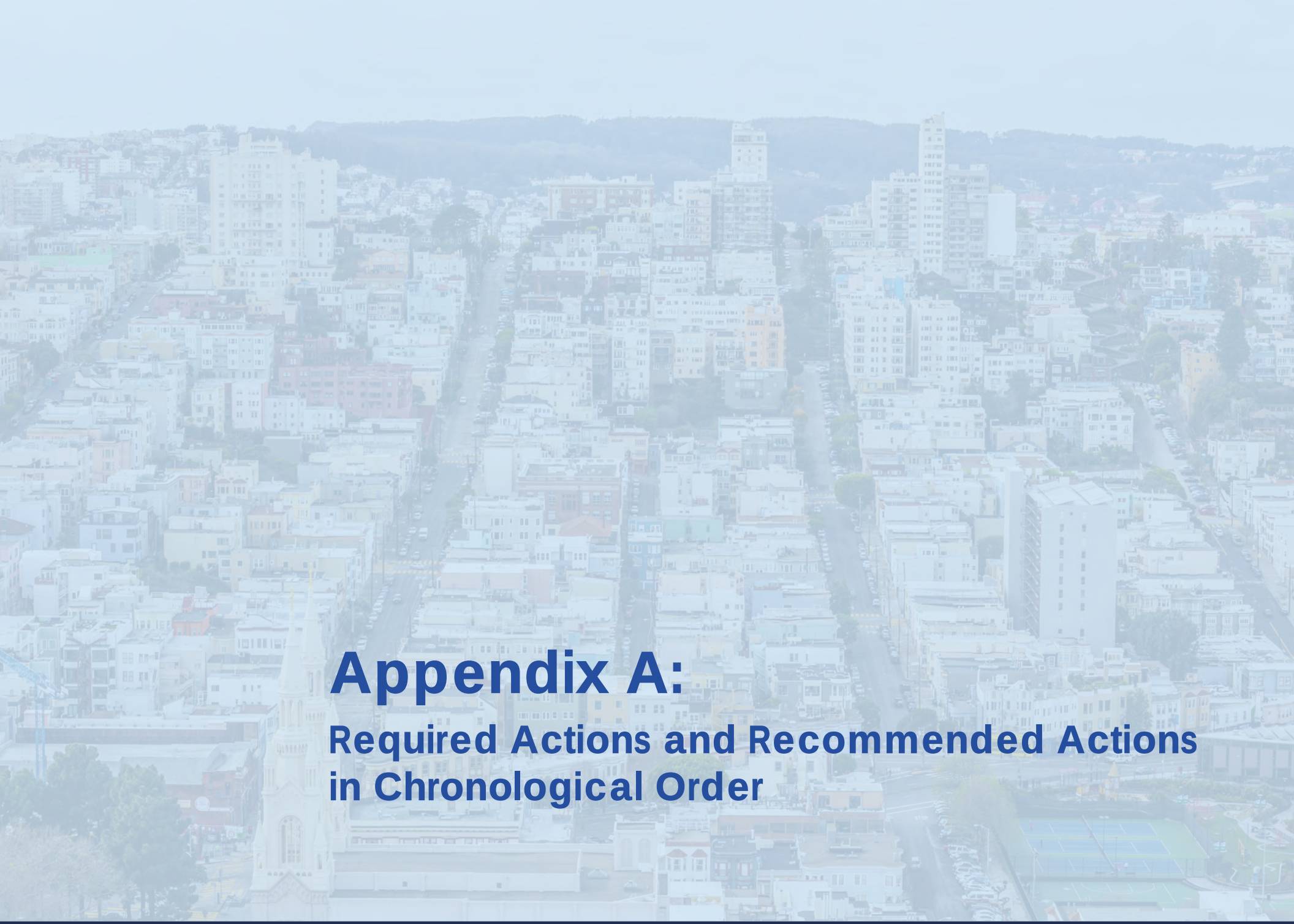
29 As mentioned on page 6, HCD is aware that the City recently reduced the Inclusionary Housing requirement as part of Mayor Breed's Housing for All Executive Directive. These requirements should be regularly reviewed and monitored to ensure they are maximizing affordability without constraining overall housing development.

30 Eller Media Co. v. City of Los Angeles (2001) 87 Cal. App. 4th 1217, 1220.

31 Barned-Smith, St. John. "Disgraced Former S.F. Building Inspector Sentenced to Prison in FBI Corruption Probe." San Francisco Chronicle, 15 July 2023, www.sfchronicle.com/crime/article/sf-curran-corruption-investigation-fbi-sentence-18196961.php.

32 Barned-Smith, St. John. "S.F. Corruption Scandal: City Audits Thousands of Properties Connected to Indicted Former Officials." San Francisco Chronicle, 14 July 2023, www.sfchronicle.com/bayarea/article/sf-corruption-building-inspection-audit-17885560.php.

33 Gov. Code, § 65583.2, subd. (c)



Appendix A:

Required Actions and Recommended Actions in Chronological Order

Appendix A: Required Actions and Recommended Actions in Chronological Order

Required Actions (18 total)

ACTION	TIMING	POLICY OR PRACTICE
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.	End subjective post-entitlement appeals immediately, and all post-entitlement appeals no later than January 1, 2024.	**Practice**
5.1 On developments that are ministerially approved, ensure that planning practice does not allow for city personnel to pressure project proponents into negotiations between neighborhood groups, and that all involvement by city personnel in meetings outside of public hearings comply with state law.	Notify planning staff of requirement immediately. Develop protocols to ensure continued compliance within 6 months.	**Practice**
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.**	30 days.	**Policy and Practice** (Multiple Approaches Available)

ACTION	TIMING	POLICY OR PRACTICE
1.5 Consistent with the recent action to eliminate the Preliminary Project Assessment, ensure that no mandatory pre-application processes are required in order for a housing development project applicant to submit a preliminary application under the Permit Streamlining Act.	30 days.	**Practice**
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.	Pass implementing ordinance within 30 days.	**Policy** (Planning Code)
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.	Pass implementing ordinance within 30 days.	**Practice and Policy** (Planning Code)
1.4 Eliminate the use of "neighborhood character" and "neighborhood compatibility" terminology in case report findings and in relevant design guidelines, and remove "light" and "air" terminology in case report findings to support discretionary requests.	30 days for case report findings. 1 year for design guidelines.	**Practice and Policy** (Design Guidelines and Planning Code)

ACTION	TIMING	POLICY OR PRACTICE
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.	Comply with state law (AB 1114) January 1, 2024.	**Policy** (City Charter)
3.3 Revise rules around administrative appeals for all post-entitlement permits, and narrow which permits are subject to additional administrative review.	Comply with state law (AB 1114) January 1, 2024.	**Policy** (Business and Tax Regulations Code, City Charter)

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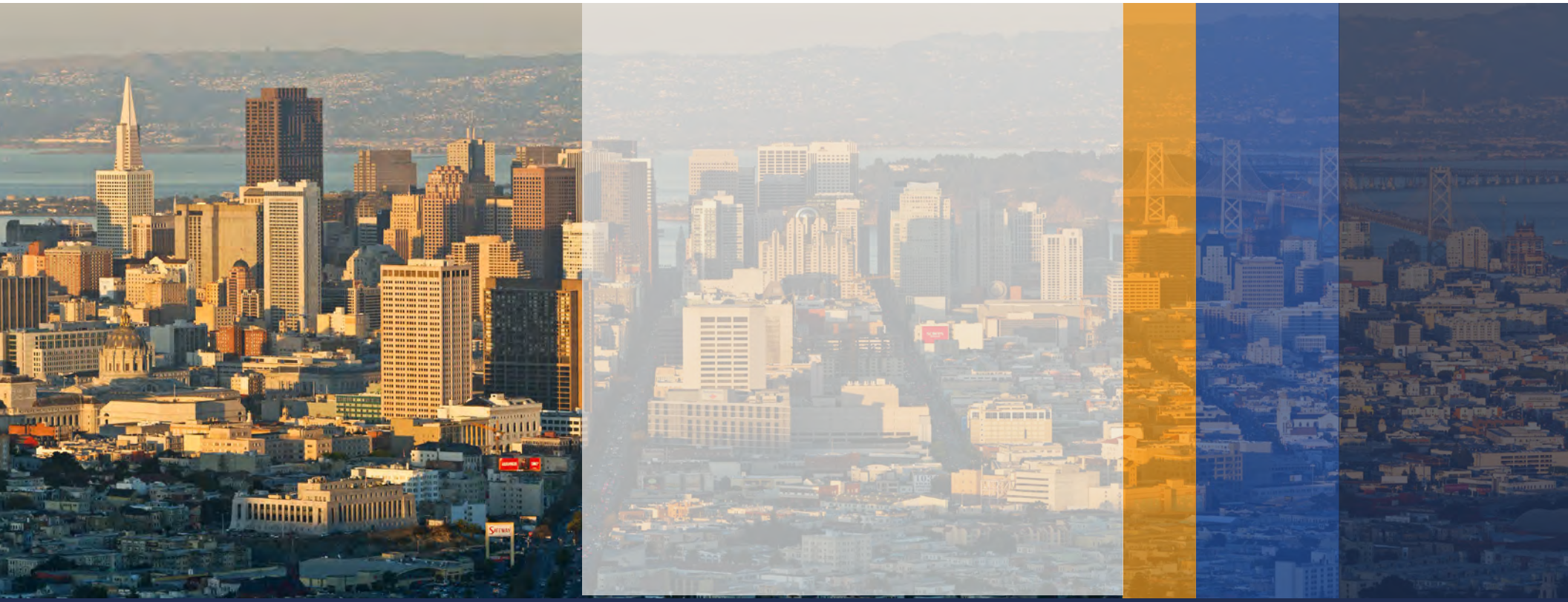

ACTION	TIMING	POLICY OR PRACTICE
1.1 Revise entitlement processes to require that housing developments that conform to existing planning and zoning standards move efficiently through a local non-discretionary, ministerial entitlement process. This includes areas outside of Priority Equity Geographies 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.	Complete by January 31, 2024, for projects on reused 4th and 5th cycle lower-income housing element sites that are 20 percent affordable, as required by Housing Element Law.[i] Immediately initiate development of community-led strategy to determine appropriate community benefits within Priority Equity Geographies and Cultural Districts that do not yet have codified community benefits. By Fall 2026, establish a local non-discretionary entitlement pathway, with progress updates to HCD every 6 months.	**Policy** (Municipal Business and Tax Regulations Code)[ii]

i Gov. Code, § 65583.2, subd. (c)

ii HCD understands that some controversy exists about whether a change to the City's Charter is also necessary and urges the City to explore this issue and potential pathways to establish a non-discretionary ministerial process for housing developments.

ACTION	TIMING	POLICY OR PRACTICE
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.	90 days. Evaluate and adjust annually.	**Practice**
2.1 Review and revise environmental planning review practices to require CEQA exemption determinations within 30 days of receiving and accepting the project application as complete, rather than making this determination at the end of the entitlement process.	6 months.	**Practice**

ACTION	TIMING	POLICY OR PRACTICE
4.1 Standardize post-entitlement review requirements and develop and measure against performance benchmarks for the permitting processes to reduce subjectivity in construction permitting. This includes publishing all post-entitlement requirements, including intake requirements, from all relevant departments included in post-entitlement reviews in checklist form. Any interpretations of relevant municipal codes applied to post-entitlement reviews must be published on the relevant department's website and consistently applied.	9 months.	**Practice**
1.8 Revise the application of the Affordable Housing Fees and Inclusionary Affordable Housing Program requirements, so as not to impose fees on affordable units for projects under State Density Bonus Law. Affordable units cannot be counted toward the total unit count for a State Density Bonus Law project in determining whether the higher Affordable Housing Fees and Inclusionary Affordable Housing Program requirements apply.	As soon as possible but no later than 1 year.	**Policy** (Planning Code and Planning Director Bulletin No. 6)

ACTION	TIMING	POLICY OR PRACTICE
4.2 Analyze and reduce constraints imposed on projects receiving City funds for affordable housing development, including removing Public Art requirements for 100 percent affordable housing projects and standardizing and streamlining reviews by the Mayor's Office of Disability.	1 year.	**Policy** (Planning Code)
1.9 Revise the Large Project Authorization in Eastern Neighborhoods (ENX) and the Downtown Large Project Authorization (DNX) processes to ensure approval criteria for housing projects are written and objective.	1 year.	**Policy** (Planning Code)
1.3 Prioritize existing housing element actions surrounding Objective Design Standards & Findings, including amending and replacing the Residential Design Guidelines and Urban Design Guidelines to remove all subjective standards and requirements, and to codify current Planning Department policy rules that are not currently in the Planning Code or design guidelines.	1 year.	**Policy** (Design Guidelines and Planning Code)
2.2 Eliminate additional requirements for supplemental studies not required by CEQA statute or Guidelines, such as shadow and wind studies, in environmental review.	1 year to evaluate which local environmental review requirements are not required by CEQA statute or Guidelines. 1-3 years to eliminate additional requirements.	**Policy** (Planning Code)

Recommended Actions (10 total)

RECOMMENDED ACTION	SUGGESTED TIMING	POLICY OR PRACTICE
6.2 When proposing Planning Code amendments, ensure that revisions simplify or reduce the rules applied to housing projects in order to decrease the institutional or technical knowledge needed by all stakeholders involved in the housing approvals process.	Ongoing.	**Policy** (Planning Code)
6.3 Maintain practice of maximizing CEQA exemptions.	Ongoing.	**Practice**
6.4 Continue to build out Permit Center to expand oversight to, and coordinate, all permits for multifamily housing development.	Ongoing.	**Practice**

RECOMMENDED ACTION	SUGGESTED TIMING	POLICY OR PRACTICE
6.5 Improve data management and public sharing of data on building permitting processes. For example, to support programmatic strategies that will expedite plan checks, revisions, and final inspections, develop accountability and tracking measures to determine average review timeframes, and identify methods to cut the timeframes. This may include updating internal permit tracking software and systems that allow all relevant City departments involved in the permitting process to access and input data about key project steps.	Ongoing.	**Practice**
6.6 Ensure project applicants are allowed to "opt in" to local programs, such as HOME SF, rather than being required to utilize the local program over programs developed by state law, such as State Density Bonus Law. When there is a pathway under state law, state law should be the default and easy to navigate.	30 days.	**Practice**

RECOMMENDED ACTION	SUGGESTED TIMING	POLICY OR PRACTICE
6.1 Conduct local land use planning and zoning, including upzoning, in an equitable manner such that the task of ensuring equitable development is not left to Development Agreements and project-level negotiations and adjudication.	Initiate by completing Planning Department recommendations for upzoning, consistent with the Mayor's Housing for All Executive Directive, by January 31, 2024. Complete by January 31, 2026.	**Policy** (Planning Code and Zoning Map)
6.7 Develop data tracking and related self-study to allow for external and internal monitoring of performance along each of the Administrative and Legislative milestones laid out in Mayor Breed's Housing for All Executive Directive, including establishing benchmarks for progress in meeting each milestone.	Increase public transparency within 6 months. Complete within 1 year.	**Practice**
6.8 Develop a system where project applicants can escalate post-entitlement permitting issues to staff dedicated to resolving these issues and expediting approvals.	6 months.	**Practice**

RECOMMENDED ACTION	SUGGESTED TIMING	POLICY OR PRACTICE
6.9 Revise rules around administrative appeals for CEQA determinations by requiring appeal hearings to be expedited (e.g., heard within 30 days from filing), and review filing fees and cost requirements for parties filing appeals.	9 months.	**Policy** (Administrative Code)
6.10 Expedite the timeline to conduct a pro-forma-based study on cumulative governmental constraints on housing development in San Francisco so that the study is complete by January 31, 2025. This study should include analysis of the interventions identified in the Required Actions.	Complete by January 31, 2025.	**Practice**

California Department of Housing and Community Development

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