

July 27, 2022

John Arntz, Director  
Department of Elections  
City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 48  
San Francisco, CA 94102

Dear Mr. Arntz:

The Board of Supervisors has recently submitted a charter amendment entitled “Affordable Housing Production Act,” sponsored by Supervisor Chan, to the Department of Elections for the preparation of a draft digest. While the Affordable Housing Production Act uses similar language to the Affordable Homes Now voter initiative, which will also appear on the November ballot, the details of the policies and the impacts of these ballot measures are starkly different. With the goal of providing clarity to voters, this letter highlights many of those key differences between the two proposals. It will be essential to highlight these differences to voters in the digest, so that voters can make an informed decision.

For voter initiatives like Affordable Homes Now, the Department of Elections and City Attorney prepare a title and summary intended to be “a true and impartial statement of the purpose of the proposed measure.” Cal. Elec. Code § 9203. More broadly, a title and summary is intended to “reasonably inform the voter of the character and real purpose of the proposed measure” and thus must contain the “chief purpose and points” of the measure. *See id.*; *Lungren v. Superior Court* (1996) 48 Cal.App.4th 435, 439-40. Under the same principles, we believe that the digest prepared for this ballot measure, sponsored by the Board of Supervisors, should also demonstrate the “character and real purpose” of proposed legislation in language that is accessible and clear to voters.

To this end, it is critical that the digest for the Affordable Housing Production Act presents voters with its “character and real purpose” by illustrating important differences between this legislation and the Affordable Homes Now Initiative. Notably, while Affordable Homes Now would expedite Affordable Housing, Educator Housing, and Increased Affordability Housing projects and deepen the bench of construction workforce, the Affordable Housing Production Act does not fully streamline Affordable Housing projects and imposes constraints that limit the availability of streamlining for Increased Affordability and Educator Housing projects. While the

details on the policies and the impacts of these ballot measures are starkly different, the similarity of the technical language is likely to confuse many San Francisco voters without the digest clearly outlining the difference between the two measures.

To support your development of an accurate digest for the Affordable Housing Production Act, I respectfully highlight for you and the City Attorney's office the chief purpose and points of the measure, as well as a few key differentiating factors between this measure and the Affordable Homes Now initiative, so that voters can be reasonably informed about the character and impacts of each.

**The Affordable Housing Production Act does not make the approvals for 100% Affordable Housing Projects' ministerial.**

Under the current City charter, various City boards, commissions, and officials generally are allowed to make discretionary decisions to approve or deny the development of housing, giving them the authority to use their own judgment. These City boards, commissions, and officials may include: the Planning Commission, the Board of Appeals, the Historic Preservation Commission, the Arts Commission, and the Board of Supervisors.

The Affordable Housing Production Act eliminates certain discretionary approvals for certain project types. However, funding and lease contracts for 100% Affordable Housing Projects would still require approval of the Board of Supervisors in the Affordable Housing Production Act. All of the recently constructed 100% Affordable Housing Projects in San Francisco have relied on city funds to cover more than [one-third of the cost of construction](#). In addition, many 100% Affordable Housing Projects are developed on city properties with a long-term ground lease. Because these funding and contracts decisions remain discretionary in Affordable Housing Production Act, all 100% Affordable Housing Projects seeking city funds or long term ground leases on city properties would still be subject to full CEQA review, be vulnerable to potential CEQA lawsuits and could effectively be blocked by a vote at the Board of Supervisors.

In contrast, the Affordable Homes Now initiative fully streamlines 100% affordable housing projects because it amends Sec. 9.118 of the Charter to specify that contracts and leases for eligible housing projects would not be subject to the approval of the Board of Supervisors, and could avoid the cost and delay of CEQA review and potential lawsuits. The Affordable Housing Production Act contains no such amendment to Sec. 9.118.

It would be inaccurate and misleading for the digest to flatly state that this measure would streamline 100% affordable housing projects or make the approvals for affordable housing

projects ministerial, since (i) these projects are already streamlined under SB 35, as described above, and (ii) funding decisions for affordable housing projects under the Affordable Housing Production Act remain discretionary, are subject to a vote at the Board of Supervisors, and the entire project must undergo CEQA review and be subject to CEQA lawsuits. Instead the digest should say that the Affordable Housing Production Act would exempt Affordable Housing Projects that comply with Code from discretionary approvals from certain decision making bodies but would still require discretionary funding approvals from the Board of Supervisors.

**The Affordable Housing Production Act is redundant with state law that already exists to streamline 100% Affordable Housing Projects.**

The Affordable Housing Production Act requires, for 100% Affordable Housing Projects to be eligible for streamlining, that the project have an average affordability level of 80% of area median income (AMI). Under current state law (SB 35; Cal Gov Code § 65400, 65582.1 and 65913.4), code-compliant projects in San Francisco that include 50% or more units affordable to households that earn at or below 80% of the Area Median Income (AMI) are already streamlined and exempt from environmental review. The provisions of the Affordable Housing Production Act that streamline 100% affordable housing are redundant with current state law, and offer no further streamlining to 100% Affordable Housing Projects.

By comparison, Affordable Homes Now enables streamlining for Affordable Housing Projects that provide an average affordability level of up to 120% of AMI. As a result, Affordable Homes Now goes beyond current state law and streamlines Affordable Housing Projects that include units that are affordable to households who earn above 80% of AMI.

It is important for the digest to state that the Affordable Housing Production Act does not provide any streamlining beyond what is currently in state law for Affordable Housing Projects.

**The Affordable Housing Production Act does nothing to expedite or streamline moderate and middle-income housing.**

The two charter amendments also differ in their affordability targets for streamlining.

The Affordable Housing Production Act narrowly defines the 100% Affordable Housing Projects eligible for its streamlining at an average affordability of 80% of AMI. Accordingly, Chan's proposal would not streamline or expedite 100% affordable projects at slightly higher AMI

levels that create affordable housing for moderate income families and middle-income, first-time homebuyers.<sup>1</sup>

In contrast, Affordable Homes Now addresses this lack of affordable housing available to moderate income households by expanding the streamlining of affordable housing for low, moderate, and middle- income households. Under Affordable Homes Now, the average affordability level for a 100% affordable project can be up to 120% of the Area Median Income (AMI). This means that affordable housing projects that include some middle-income units for households making up to 140% of AMI would also be eligible for streamlining, as long as the average affordability level for the project is below 120% of AMI and the rents and prices of all units are at least 20% below the market-rate average for the surrounding neighborhood. These provisions align with the City's prior policy commitments to encourage more moderate and middle-income housing, including Prop E, a voter initiative that passed in 2019 to expedite housing for educators earning up to 140% of AMI.

It is important for the digest to clearly state that the Affordable Housing Production Act would not streamline affordable housing for moderate income households so that voters understand this critical difference between the two measures.

**Affordable Housing Production Act does not expedite housing because it does not provide time limits for permit review and approvals.**

Currently, there are no time limits by which the City must issue a permit for a housing project that complies with every aspect of the City's Planning and Building Codes. A recent study showed that the median time for projects to move from application to construction was 4 years, and for a significant number of projects, it took more than 10 years to receive building permits.<sup>2</sup>

The Affordable Housing Production Act does not set any timelines by which the City must deem a project application complete, nor does it establish any consequences if the City does not meet its deadlines to establish whether a project with a completed application is eligible for the Affordable Housing Production Act.

---

<sup>1</sup> Middle or moderate income households are typically considered to earn between 80% and 140% of the AMI.

<sup>2</sup> Goggin, B. (2018). (rep.). *Measuring the Length of the Housing Development Review Process in San Francisco* (p. 16). Berkeley, CA: Turner Center for Housing Innovation.  
[https://turnercenter.berkeley.edu/wp-content/uploads/2018/07/Goggin\\_Permitting\\_Timelines\\_July\\_2018.pdf](https://turnercenter.berkeley.edu/wp-content/uploads/2018/07/Goggin_Permitting_Timelines_July_2018.pdf)

By contrast, the Affordable Homes Now Initiative would expedite approval of eligible projects by mandating clear and limited time periods for the City to determine an application's completeness and eligibility for streamlining, and by restricting the City's ability to delay or reject permits for an eligible housing project that complies with the City's Planning and Building Codes.

The absence of timelines established in the Affordable Housing Production Act should be understood by the average voter as maintaining the status quo, and not effectively streamlining or accelerating the permitting of housing projects. The digest should clearly state this fact.

**The Affordable Housing Production Act creates onerous new requirements that reduce the number of mixed-income projects eligible for streamlining, which will not result in an increase in affordable housing construction.**

Affordable Housing Production Act requires that Increased Affordability Housing Projects have an increased inclusionary rate of 8%, meaning that rental housing development projects citywide would need to reserve 30% of units onsite for lower income households. In most areas of the city, this measure would require 30 affordable units in a 100-unit building. The increased inclusionary percentage would also apply to any additional units that are added as a result of the state density bonus. The city's [Housing Affordability Strategies](#) and other feasibility studies have repeatedly demonstrated that the majority of mixed-income projects are not buildable with the existing inclusionary rate of 22%. Increasing it to 30% makes a higher share of mixed-income projects in San Francisco unbuildable, and significantly limits the number of projects that are eligible for streamlining. This means that the Affordable Housing Production Act will not result in higher production of Increased Affordability Housing Projects or of affordable units within those Increased Affordability Housing Projects.

The Affordable Housing Production Act also imposes additional new requirements for mixed-income projects to be eligible that are more stringent than the existing inclusionary policy. Under the Affordable Housing Production Act, 20% of the additional affordable units must be 3-bedroom units, and 30% of the additional affordable units must be 2-bedroom units. If additional affordable units are studios, they can be priced at no more than 80% of AMI.

In contrast, Affordable Homes Now only requires that streamlined Increased Affordability Projects provide 15% more affordable units than currently required by the city's existing inclusionary policy. The requirement varies by zoning district, but for most areas of the city, 25 affordable units would be required in a 100-unit building. Rather than creating new standards for unit sizes or rents/sales prices, Affordable Homes Now uses the city's existing inclusionary policy to regulate those additional affordable units.

For the average voter, it will be difficult to distinguish between the technical details of the inclusionary requirements for Increased Affordability Housing Projects in the two ballot measures. Furthermore, most voters may not be aware that the new burdensome requirements under the Affordable Housing Production Act are impossible for most mixed-income projects to meet, and would result in fewer mixed-income housing projects being streamlined under the Affordable Housing Production Act than Affordable Homes Now.

It is therefore critical for the digest to state that the Affordable Housing Production sets new inclusionary requirements that limit eligibility for streamlining, which means that the Affordable Housing Production Act will result in fewer Increased Affordability Housing projects than Affordable Homes Now.

**The Affordable Housing Production Act limits the construction labor on Educator Housing and Increased Affordability Housing Projects to graduates of specific state-certified apprenticeship programs.**

The Affordable Housing Production Act requires developers to use "skilled and trained" labor on Increased Affordability and Educator Housing Projects. To the average voter, the "skilled and trained" language will not be a meaningful distinction. But in fact, to qualify as "skilled and trained" workers must have graduated from specific state-certified apprenticeship programs. This group only constitutes one-seventh of California's construction trades workforce. Using the "skilled and trained" labor standard limits the supply of construction workers significantly, likely creating more delays and increasing the cost of housing construction.

By comparison, Affordable Homes Now requires construction workers to be paid prevailing wages and to receive healthcare benefits. Under Affordable Homes Now, employers must also provide apprenticeship opportunities to create pathways for more San Franciscans into middle-class construction and union jobs.

It is important that the digest clearly explains that the "skilled and trained" requirement in the Affordable Housing Production Act will constrain the construction labor force available for these projects.

**Conclusion**

On the face of it, the two charter amendments to streamline housing may look quite similar to voters. But a deeper look at the details between these measures shows that there are significant differences, which will lead these two measures to have very different outcomes. It is

essential that the digest highlight these important distinctions and the differences in outcomes for voters.

Thank you for your consideration,

A handwritten signature in blue ink, appearing to read 'Sujata Srivastava', with a long horizontal flourish extending to the right.

Sujata Srivastava  
SPUR