

City and County of San
Francisco



Board of Supervisors

AARON PESKIN
President
市參事 佩斯金

CONNIE CHAN
Member, District 1
陳詩敏

December 26, 2023

The Honorable David Chiu
San Francisco City Attorney
1 Dr. Carlton B. Goodlett Place, Room 234
San Francisco, CA 94102

Dear City Attorney Chiu,

San Francisco city government has long been committed to building housing, especially affordable housing in our city. Over the course of the last few years alone, the City has dedicated half a billion dollars of public funds to this aim, changed our laws to facilitate even more housing creation, and approved more than 70,000 new units of housing. Yet these efforts are being ignored by a new state law that seeks to singularly penalize San Francisco while letting neighboring jurisdictions fall woefully short in creating any significant new housing at all.

We are writing to request that your office provide the Board of Supervisors with legal advice laying out the City's options to defend San Francisco against the State's unfair legislative mandates that are diminishing our City's ability to build the affordable housing our residents desperately need, and eroding our ability to meet our legal obligations to Affirmatively Further Fair Housing.

As you well know, time and again, San Francisco has committed vast amounts of public dollars to building affordable housing: in 2015 San Francisco voters approved a \$310 million Affordable Housing Bond, and did so again in 2019 with another \$600 Million Affordable Housing Bond. In 2020, the Board of Supervisors dedicated \$180 Million of Educational Revenue Augmentation Fund (ERAF) to increase and preserve the city's affordable housing stock. Then in 2023, again the Board of Supervisors approved sending another bond in the amount of \$300 for Affordable Housing which will be voted on in March. No city in California has invested its public dollars in building affordable housing at such a scale as San Francisco, a city with a land limit of less than 49 square-miles.

Our commitment has gone beyond dollars. The City has also recently approved legislation to significantly lower its inclusionary housing percentage requirement to provide market rate developers with increased financial feasibility during a time of high interest rates and construction costs to spur immediate housing production. Meanwhile, the City also continues to work with the California Department of Housing and Community Development on its Housing Element Plan to meet the State's mandate of 82,000 housing units by 2031 and has passed significant legislation to streamline housing developments and upzone for residential development.

As a result of the City's efforts, according to the Planning Department, we have approved well over 70,000 housing units that are in the "pipeline" awaiting a more favorable economic environment to be constructed – representing nearly three-fourths of our Regional Housing Needs Allocation (RHNA) mandate which is not to mention the estimated 60,000 existing vacant housing units identified by the [City's Budget and Legislative Analyst](#). Unfortunately, and through no fault of the City, developers are not moving these projects to construction. Despite these alarming statistics, our City still exceeded our development goals for the prior RHNA cycle. The problem facing San Francisco is that we have far exceeded our production of market rate housing, yet, despite our commitments and public investment in affordable housing, we continue to fall dangerously short in our affordable housing production.

We cannot force developers to build and yet new legislation would seek to penalize San Francisco anyway. Earlier this year, State Senator Scott Wiener authored SB 423, the successor to SB 35, which is now chaptered into State Law after having been signed by Governor Gavin Newsom.

SB 423 mandates that developers proposing to build housing can request ministerial approval for their projects in any of the four RHNA income categories (Very Low, Low, Moderate, Above Moderate) for which a jurisdiction is under-performing. Senator Wiener's legislation, SB 828 which was signed into law in 2018, forced cities to rezone land and resulted in an explosion of San Francisco's RHNA goals, 57% of which are made up of the three below market rate categories, with no additional State funding. This sets San Francisco up to underperform in all four RHNA categories. Not only has Senator Wiener set up San Francisco to fail, despite all our legislative and funding efforts, he added a last minute amendment to SB 423 that singles out San Francisco for streamlining in 2024, which is years earlier than every other jurisdiction in California. As a result, San Francisco is forced to approve unaffordable market rate housing developments across the City without any public input, well ahead of any other jurisdiction in the State. Instead, what we need from the State is a major investment in affordable housing.

We want to be very clear – 70,000 units of housing are approved and ready to be built. Developers have chosen not to build. Yet the City is being penalized by allowing these same developers to essentially have preemptory powers over regular local processes. We believe that SB 423 discriminates against San Francisco, contravening our status as a Charter City, diminishes our ability to build the affordable housing our residents desperately need, and thwarts our legal obligations to Affirmatively Further Fair Housing. This new law will create undue hardship on San Francisco and ultimately lead to displacement of small businesses, residential tenants, and homeowners in San Francisco. We respectfully ask that you present the Board of Supervisors with our legal options, including but not limited to litigation against the State.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in blue ink that reads "Aaron Peskin". The signature is fluid and cursive, with the first name being more prominent than the last.

Aaron Peskin
President, Board of Supervisors

A handwritten signature in blue ink that reads "Connie Chan". The signature is fluid and cursive, with the first name being more prominent than the last.

Connie Chan
Member, Board of Supervisors