



April 16, 2020

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Re: March 31 COVID-19 Health Order Impacts on Housing Production

Dear Drs. Pan, Farnitano, Willis, Cody, Aragón, Morrow, and Hernandez:

Thank you for your extraordinary leadership in taking prompt and decisive action to protect our counties from the COVID -19 pandemic. We applaud you for taking this threat seriously, and for taking bold and necessary actions to prevent the contagion's rapid spread and thereby reducing the impacts on our healthcare system and our community at large. We fully support your leadership and actions.

We write to ask that, moving forward, you consider changes to the housing provisions of your March 31, 2020 order. We share your desire to ensure our construction workforce is safe. Indeed, we think it appropriate for you to develop construction workplace guidelines in coordination with CalOSHA and the CSLB, in order to ensure construction worker safety while allowing desperately needed housing production to continue.

We also share your belief — reflected in your order, as well as the Governor's order and federal guidance — that housing construction is an essential service given our severe housing shortage. We believe the Bay Area health order should mirror the state and federal approach to housing — broadly classifying housing construction as an essential activity and avoiding arbitrary choices that certain housing can be built while others cannot.

However, if you decide not to conform to the state and federal housing approach, then we have recommendations for revised housing provisions.

We understand that individual Supervisors from various counties have had conversations with county health officials expressing concerns about the March 31 order's approach to housing. While our views are our own, we understand that the views we express in this letter are generally consistent with the views expressed by elected officials throughout the region.

The Bay Area — and California as a whole — is in the midst of a severe housing shortage. Statewide, our shortage is in the millions, and the Bay Area shortage is also severe. This shortage is destabilizing the middle class, preventing young people from establishing themselves, and pushing more and more people into poverty, homelessness, and crushing commutes.

COVID-19 has not changed our desperate housing situation. In fact, in many ways the pandemic has made our housing crisis worse by making housing even less attainable. Our housing shortage also makes health outcomes worse, particularly for low income communities and communities of color. For example, our housing shortage does exactly what we *don't* want during a pandemic like COVID-19: Forcing people into over-crowded housing situations. In addition, the Bay Area's failure to build enough housing has pushed a huge number of people further away from their jobs, thus increasing auto pollution and the resulting respiratory conditions that increase risk for severe COVID-19 symptoms.

We need to ensure that we don't, in the name of public health, create both short term and long term unintended health problems for our community due to over-crowding and long auto commutes.

To address our housing crisis, the Legislature and Governor have been working for years to make it easier to build every type of housing, including subsidized affordable housing for low income people, market-rate housing (which is essential for the middle class, since subsidies focus on low income people), student housing, senior housing, accessory dwelling units (aka ADUs or in-law units), and so forth. The solution to our crisis is “all of the above.”

The March 31 order clearly recognizes our need for more housing and does so by indicating that projects can proceed as long as at least 10% of the units in the project are below market rate. While on the surface, that 10% inclusionary limitation appears reasonable, it actually places a serious and potentially irreversible roadblock to essential housing construction, including projects that help meet our affordable housing needs, projects that serve students and seniors, and projects that have their permits and that may already be under construction and even very close to completion.

We are aware that as we move toward May 3, you are working on potential revisions to the health order. We believe there is a strong argument for conforming the region's housing approach to the state and federal approaches — broadly classifying housing construction as an essential service — but if you are looking to maintain a more restrictive approach, we offer the following recommendations about additional essential housing that should be permitted under a revised order.

To be clear, we are not advocating to expand the ability of people to engage in renovations and expansions of their existing homes that aren't creating new housing and that can cause significant disruption in a neighborhood during a period when people are home all day. Nor are we advocating that local officials should refrain from enforcing against violations of the law by people who flout the rules. Rather, our recommendations are exclusively about continuing to deliver desperately needed new housing.

Our recommendations — in the event you do not conform the Bay Area housing rules to the broader state and federal approaches — are the following:

1. Housing should be allowed if at least 10% of the units are below market rate, whether on-site, off-site, or a fee to fund other affordable housing: The March 31 order allows housing only if the 10% inclusionary units are on-site, but not if a project builds the affordable units off-site or pays a fee to finance housing that is 100% affordable (e.g., a housing project for formerly homeless people). Thus, for example, a project with 10% on-site affordability is allowed to proceed, while a 10% or even 20% affordable project that builds the affordable units nearby would be disqualified. Projects that fulfill their inclusionary requirement off-site or via a fee can produce a significant amount of affordable housing — and obviously we want to ensure that off-site affordability options actually happen — but under the current rule, those projects (and resulting affordable units) could not be built. Limiting this category only to on-site affordable units reduces that amount of affordable housing built in the Bay Area.

2. Housing projects should be allowed if they produce at least 20 units of affordable housing, regardless of the percentage: Some projects may not hit 10% inclusionary, depending on local rules, but they still produce a sizable number of units. For example, a 500-unit housing development in a city with an 8% inclusionary requirement would produce 40 affordable units. Although that number is short of 10%, it's still a sizable number of desperately needed affordable units (and a large number of desperately needed overall units). Looking at the number of units, and not just percentages, is important since, in the end, people live in units not percentages. We suggest that if a project produces at least 20 below market rate units, it should be allowed to proceed, regardless of the inclusionary percentage.

3. Student housing and senior housing should be allowed: Student housing and senior housing are often not part of inclusionary housing programs, so the inclusionary percentage often does not apply to them. Yet, student and senior housing are both desperately needed. We believe allowing student and senior housing is warranted.

4. Housing that is mostly complete: Many projects were in construction when the COVID-19 emergency hit. Projects that are majority complete should be able to be finished. We need the housing, and these projects are largely done. Moreover, for ownership housing under construction, people are frequently already in contract and have mortgage obligations. Stopping projects in the middle of construction can be very harmful to these purchasers.

Thank you, again, for your leadership during these challenging times. Know that we stand ready to assist you in our mutual effort to keep the Bay Area properly sheltered in place and protected from this pandemic.

Sincerely,



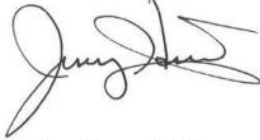
Senator Scott Wiener
Chair, Senate Committee on Housing



Assemblymember David Chiu
Chair, Assembly Committee on Housing
and Community Development



Senator Nancy Skinner



Senator Jerry Hill



Assemblymember Buffy Wicks



Assemblymember Evan Low



Assemblymember Kevin Mullin



Assemblymember Robert Rivas



Assemblymember Ash Kalra



Senator Bill Dodd



Assemblymember Philip T. Ting



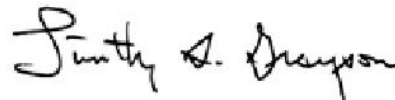
Assemblymember Marc Berman



Assemblymember Bill Quirk



Assemblymember Mark Stone



Assemblymember Tim Grayson



Assemblymember Rob Bonta

Cc: Presidents, Board of Supervisors of for the counties of Alameda, Contra Costa, Marin, Napa, Santa Clara, Santa Cruz, San Benito, San Francisco, San Mateo, Solano, and Sonoma
San Francisco Mayor London Breed
Karen I. Relucio, MD, Public Health Officer for Napa County
Bela T. Matyas, MD, MPH, Public Health Officer for Solano County
Sundari Mase, MD, Interim Public Health Officer for Sonoma County
Gail Newel, MD, MPH, Public Health Officer for Santa Cruz County
Martin Fenstersheib, MD, MPH, Interim Public Health Officer for San Benito County
Jesse Arreguin, Mayor, City of Berkeley