



**Feb 19, 2025**

**City of Sausalito**  
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**Re:** Proposed Objective Design and Development Standards (ODDS) and Form Based Code

Dear Sausalito Planning Commission,

The California Housing Defense Fund (“CalHDF”) submits this letter to remind the City of its obligation to abide by all relevant state and federal laws when considering the proposed Objective Design and Development Standards (“ODDS”) and Form-Based Code for the meeting of February 19, 2025. Specifically, the City must comply with Housing Element law, SB 330, SB 478, and other statutes.

We thoroughly appreciate the City’s attention to and robust revision of these standards—it is clear the City is committed to passing objective standards in accordance with state law. However, the proposed standards, as currently drafted, do not adhere to these laws. CalHDF encourages the Planning Commission to delete the proposed Chapter 3 (Public and Private View Preservation Standards) from the ODDS, as recommended by staff. The view preservation standards present enormous legal issues and the City is much better off abandoning them.

The ODDS, as proposed, would result in a violation of state law (including Housing Element Law) inasmuch as the ODDS: inhibit development of the City’s Regional Housing Needs Allocation; add a new governmental constraint that must be analyzed and mitigated by the City’s Housing Element; violate numerous policies in the City’s Housing Element; require no-net loss findings to be made; violate the City’s duty to affirmatively further fair housing; represent an impermissible development moratorium on certain parcels in violation of SB 330; are an impermissible downzoning in violation of SB 330; and are non-objective.

Furthermore, the ODDS viewshed software must be made available to HCD and the public prior to passage to avoid violating SB 330, the Brown Act, and the Public Meetings Law. The

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Housing Accountability Act restricts the ability of the City to use the ODDS to disapprove projects identified for lower-income households the City's Housing Element. And the proposed zoning text amendment establishes floor area ratios below the minima provided in SB 478.

### **The ODDS Would Violate Housing Element Law**

#### **The ODDS Do Not Facilitate Development of the City's Regional Housing Needs Allocation**

If the outcome of these regulations is that proposed developments actually produce fewer units than projected, then this policy violates Housing Element Law. The City's Housing Element states that the City's overall capacity for low/very-low/extremely-low income units will be 391 units, once the various rezonings are performed. However, if the City's proposed ODDS are adopted as proposed, then this capacity will likely be unachievable if developers develop multifamily buildings in compliance with these standards. Implementing the ODDS and the form-based code as proposed calls into question the City's ability to achieve substantial compliance with its Housing Element.

The example building forms in the slide presentation ("Peer Review Group Presentation to Planning Commission Part 2, February 18, 2025") are demonstrative. The building forms that comply with the viewshed protection software have extremely deep floorplates with many floors partially underground. These are unrealistic building forms for any residential development, as state building code requires all bedrooms to have windows for emergency egress.

The City cannot assume that developers will utilize the state Density Bonus Law ("DBL") to waive these restrictive zoning standards. The Department of Housing and Community Development's ("HCD") [Housing Element Site Inventory Guidebook](#), dated June 10, 2020, provides the following guidance on page 14:

The analysis of "appropriate zoning" should not include residential buildout projections resulting from the implementation of a jurisdiction's inclusionary program or potential increase in density due to a density bonus, because these tools are not a substitute for addressing whether the underlining (base) zoning densities are appropriate to accommodate the RHNA for lower income households.

#### **The ODDS Are a New Government Constraint that Must Be Analyzed**

The proposed ODDS, particularly the view protection aspects, therefore represent a new governmental constraint on housing, which the City's Housing Element fails to analyze. A city's housing element must analyze potential and actual governmental constraints on housing maintenance and production. (Gov. Code, § 65583, subd. (a)(5).)

Page 15 of the proposed amended Housing Element discusses the ODDS, but it does not include any mention of how the viewshed protections will constrain housing development. The Housing Element does not address the viewshed protections, nor does it discuss how the proposed height cap in historic districts may constrain housing development.

From page 15 of the proposed amended Housing Element: “The ODDS will not require any unusual or expensive building materials (i.e., [sic] natural stone, brick, , [sic] standards, or design characteristics that would have an adverse effect on housing cost, supply, choice, and affordability.”

This statement is inadequate. The proposed view protections will require very specific designs that will immediately, negatively affect housing cost, supply, choice, and affordability. Instead, the City’s Housing Element must include a specific analysis of how the ODDS, particularly the viewshed protections, will constrain housing development.

Furthermore, the Housing Element must include programs to actively remove constraints. (Gov. Code, § 65583, subd. (c)(3).) By imposing new land use regulations (i.e. the ODDS) that inhibit development, the Housing Element will directly violate this aspect of Housing Element Law.

### **The ODDS Violate Numerous Policies in the City’s Housing Element**

Additionally, the proposed ODDS and form-based code runs counter to programs in the City’s Housing Element:

Program 19: ... the ODDS will be developed to address multi-family development at densities envisioned by the General Plan, Zoning Code, and Program 4.

If the City passes the proposed ODDS and form-based code as proposed, then it will be failing to create regulatory pathways for the development of multifamily housing, including housing for lower-income households. This would violate numerous aspects the Housing Element, including Policy H-2.1 Variety of Housing Choices, Policy H-2.2 Adequate Sites, Policy H-2.10 Workforce Housing, Policy H-3.1 Incentives for Affordable Housing, Policy H-3.2 Flexible and Objective Development Standards, and Policy H-3.4 Development Review.

### **The City Must Make No Net Loss Findings to Pass the ODDS As Proposed**

If the City adopts the ODDS as proposed (i.e. with the viewshed protections and new height restrictions), it will likely fail to meet its RHNA obligations and violate the No Net Loss Law, i.e., Government Code section 65863. Pursuant to State law, the City must:

“... ensure that its housing element inventory... can accommodate, at all times throughout the planning period, its remaining unmet share of regional housing need. ... At no time... shall a city... by administrative, quasi-judicial, legislative, or other action permit or cause its inventory of sites identified in the housing element to be insufficient to meet its remaining unmet share of the regional housing need for lower and moderate-income households.” (Gov. Code, § 65863, subd. (a).)

Since the City’s Housing Element has already been approved by HCD and adopted, the City must first ensure that the proposed ODDS will not interfere with its RHNA obligations for each income category by reducing the residential density of any inventoried sites in the Housing Element before adopting the proposed ODDS. If the proposed ODDS would reduce an inventoried site’s residential capacity, the City must first make written findings, supported by substantial evidence, that the remaining inventoried sites can still accommodate its RHNA requirements. (Gov. Code, § 65863, subd. (b)(1).)

If the remaining inventoried sites cannot accommodate the City’s RHNA requirements, then the City must immediately identify and add additional, adequate sites to its Housing Element to ensure there is no net loss of residential unit capacity. (Gov. Code, § 65863, subd. (c)(1).) Any “actions to identify additional sites or rezone must occur before or concurrently with any action or approval to reduce a parcel’s density.” (Gov. Code, § 65863, subd. (c)(1); Memorandum from HCD on No Net Loss Law Gov. Code, § 65863 (Oct. 22, 2019).) If those actions “represent a fundamental alteration” to the City’s approved Housing Element, the City is required to amend their Housing Element’s inventoried sites pursuant to Government Code section 68885, subdivision (b), which requires revisions to be submitted to HCD for review, prior to or concurrently with, any action or approval to reduce a parcel’s residential density.

### **The ODDS Will Violate the City’s Duty to Affirmatively Furthering Fair Housing**

Local governments have a duty to affirmatively further fair housing (“AFFH”). (Gov. Code § 8899.50; *Martinez v. City of Clovis*, 90 Cal.App.5th 193, 283 (2023)). California’s 2018 law, AB 686 (Gov. Code, § 8899.50), requires all public agencies in the state to promote fair housing and avoid actions that undermine this duty, building on the federal Fair Housing Act of 1968. In *Martinez v. City of Clovis*, the California Court of Appeal held that the City of Clovis’s Housing Element law violation also constituted a violation of a city’s statutory duty to AFFH because “one purpose of Housing Element Law and its requirement that municipalities zone sufficient sites to accommodate their RHNA is to further affordable housing for lower income households.” (*Id.* at 289).

For purposes of state fair housing law (See Gov. Code, § 8899.50, *inter alia.*), residents of low-income housing are a protected class. The City is obligated by state law (*ibid.*) not to discriminate against such residents based on protected characteristics.

The complexity and stringent requirements of the ODDS as a whole, particularly the viewshed requirements and massing forms, make building housing extremely difficult and expensive and discourage the building of new housing affordable to lower-income households. As discussed *supra*, the example building forms in the slide presentation (“Peer Review Group Presentation to Planning Commission Part 2, February 18, 2025”) are demonstrative of how the viewshed protections of the ODDS represent major new constraints on housing. The compliant building forms have extremely deep floorplates with many floors partially underground. These are unrealistic building forms for any residential development, including lower-income development, as state building code requires all bedrooms to have windows for emergency egress.

In a city like Sausalito, where high property values already make affordable housing difficult to build, imposing a rigid set of design standards that require difficult-to-build massings within narrow corridors to preserve viewsheds will further drive up costs, discouraging affordable housing development and violating the city’s duty to affirmatively further fair housing under state law.

### **The ODDS Would be a De Facto Development Moratorium on Certain Parcels**

Government Code section 66300, subdivision (b)(1)(B) prohibits local agencies from “imposing a moratorium or similar restriction or limitation on housing development. . . within all or a portion of the jurisdiction of the affected county or city.” The ODDS, most notably the viewshed protections, will violate state law if they impose an effective moratorium on development on any parcels within the City.

Specifically, if AB 2011 and SB 35 projects are forced to reach compliance with the ODDS but are not allowed to fully waive the ODDS standards to achieve the allowable FAR (see page 6 of this comment), the City’s proposed design standard scheme could create a de facto development moratorium on many parcels. It does not matter that the ODDS are not an explicit moratorium on development. SB 330 clearly states that this moratorium prohibition was intended to “be broadly construed as to maximize the development of housing. . .” (Gov. Code, § 66300, subd. (e)(2)).

State law requires the City to get approval from HCD before enforcing the proposed ordinance, which it should do by submitting the ODDS and the proposed software to HCD for review. The City “shall not enforce a zoning ordinance imposing a moratorium or other similar restriction on or limitation of housing development until it has submitted the ordinance to, and received approval from, [HCD].” (Gov. Code, § 66300, subd. (b)(1)(B)(ii)).

## The ODDS Would be an Illegal Downzoning

The City may not adopt any regulations if they would have the effect of reducing the intensity of land use, as such a downzoning is forbidden by SB 330. Government Code section 66300, subdivision (b)(1)(A) prohibits local agencies from (emphasis added):

Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district in effect at the time of the proposed change, below what was allowed under the land use designation or zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018, except as otherwise provided in clause (ii) of subparagraph (B) or subdivision (h). For purposes of this subparagraph, “reducing the intensity of land use” **includes, but is not limited to, reductions to height, density, or floor area ratio,** new or increased open space or lot size requirements, new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, **or any other action** that would individually or cumulatively reduce the site’s residential development capacity.

The proposed regulations, which would apply to projects being proposed pursuant to AB 2011 and SB 35, violate this state law in multiple ways.

First, Chapter 3’s proposed restriction on development based on viewshed obstruction would result in projects no longer being developable, given Sausalito’s setting between hills and the Bay. This is an effective downzoning as compared with what was allowed under the City’s zoning on January 1, 2018. In turn, this would make many residential projects, including SB 35 and AB 2011 projects, completely unbuildable. The City may not apply this standard to any housing development projects if it would reduce a project’s residential development capacity.

Second, Chapter 6’s restrictions on height in historic districts may also be an illegal downzoning pursuant to SB 330 if they restrict height compared with what was allowed on January 1, 2018. By restricting new development to the average height of the Neighborhood Context buildings, the City is imposing a major new constraint to housing development in these areas.

The California Court of Appeal has made clear that the City’s proposed actions here would violate state law’s prohibition on downzoning. In *Yes in My Back Yard v. City of Culver City* (2023) 96 Cal.App.5th 1103, the Court of Appeal ruled that a reduction in floor-area-ratio (“FAR”) maximums violated the downzoning prohibition. This conclusion was straightforward: the reductions in FAR maximums cut the buildable capacity of parcels they

applied to in direct violation of the letter and the spirit of state law. The same is true of the City's proposals here.

### The ODDS Are Not Objective

The ODDS may not satisfy SB 330's definition of "objective" if the underlying software is not publicly available, or is based on inaccurate or missing data. An "objective design standard" "involve(s) no personal or subjective judgment by a public official and is uniformly verifiable by reference to an external and uniform benchmark or criterion **available and knowable by both the development applicant or proponent and the public official before submittal of an application.**" (Gov. Code, §§ 66300(a)(7) and 65912.113(g) (emphasis added).)

To comply with state law, the ODDS must allow applicants to know if projects satisfy viewshed requirements *before* an application is submitted. The Planning Commission has already indicated that it is aware of potential difficulties in meeting this standard (see Comments from January 15, 2025 Study Session), and the City should clarify how it plans to ensure the ODDS are available and knowable. If the software and its underlying data is not freely and publicly accessible, it may not be considered available. If the software is based on inaccurate or missing data, the standards may not be available and knowable. If these questions are not resolved, the ODDS may not resolve the City's need for objective design standards.

### The ODDS View Protection Software Must Be Made Available To HCD And the Public

The City must receive approval from HCD before enforcing the proposed ordinance, which it should do by submitting the view protection software to HCD for review. As discussed *supra*, the City "shall not enforce a zoning ordinance imposing a moratorium or other similar restriction on or limitation of housing development until it has submitted the ordinance to, and received approval from, [HCD]." (Gov. Code, § 66300, subd. (b)(1)(B)(ii).) As the underlying software forms the basis for the ODDS, the City must submit the completed ODDS software for approval from HCD before they may be implemented.

Further, California Government Code sections 65853-65855 require all zoning amendments to be "studied," reported on, and subject to public comment at the planning commission level. The planning commission's recommendation is then instrumental to the passage of the amendment. If the proposed software is incomplete or unavailable at the time the planning commission issues its recommendation, or even hears its final public comments, their study may be deficient as a significant element of the amendment was incomplete at the time of review. As noted above, the viewshed ordinance could have significant impacts on the feasibility of affordable and high-density housing and it would be irresponsible for the planning commission to issue a recommendation pursuant to Gov. Code sections

65853-65855 without testing and giving the public the opportunity to test the software and assess these impacts.

Additionally, the ODDS software must be available to the public before it is voted on or implemented. The Brown Act requires that meetings of any legislative body “shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body’s consideration of the item. . . .” (Gov. Code, § 54954.3, subd. (a).) Ordinances zoning parcels of land or initiatives establishing design standards are considered legislative acts under state law, and are therefore subject to Brown Act requirements. (See *Arnel Dev. Co. v City of Costa Mesa*, 28 Cal.3d 511, 516 (1980); *San Diego Bldg. Contractors Assn. v. City Council*, 13 Cal.3d 205, 208 (1974).) If the data and software underlying the ODDS standards are not publicly available prior to their implementation, members of the public will not be able to adequately review and comment on the proposed standards.

### **The Proposed ODDS May Not Be Applied to Sites in the Housing Element Inventory**

The City may not use the proposed ODDS to disapprove certain residential development projects on sites in the City’s housing element site inventory. This follows from the portion of the Housing Accountability Act (“HAA”) known as the “baby builder’s remedy,” i.e. Government Code Section 65589.5, subdivision (d)(5)(A):

[A local jurisdiction may not cite inconsistency with the zoning code to] disapprove or conditionally approve a housing development project if the housing development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction’s housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction’s zoning ordinance and general plan land use designation.

The ODDS must take note of this rule and, at minimum, exempt such projects from its requirements.

The City cannot rely on subdivision (f)(1) of the HAA to escape this outcome. That subdivision allows the application of objective standards only if they are “appropriate to, and consistent with, meeting the jurisdiction’s share of the regional housing need.” (Gov. Code, § 65589.5, subd. (f)(1).) On top of this, any development standards applied based on subdivision (f)(1)’s authority “shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.” (*Ibid.*)

If the City attempts to apply its ODDS to projects proposed under the baby builder’s remedy, it will be vulnerable to lawsuits by the developer and organizations such as CalHDF. (Gov.

Code, § 65589.5, subd. (k)(1)(A)(i).) These lawsuits will leave the City on the hook for *both parties'* attorney's fees (*id.* at subd. (k)(1)(A)(ii)) as well as minimum penalties of ten thousand dollars per proposed housing unit (*id.* at subd. (k)(1)(B)). CalHDF wishes to impress on the City that there are consequences for violating state housing law that CalHDF is prepared to enforce, and it is better for everyone – the City, the state, and all Californians – if the City upholds its legal duties.

### **The Zoning Text Amendment's Floor Area Ratios Violate SB 478**

In addition to the various issues with the ODDS, the zoning text amendment's proposed floor area ratio (FAR) for multifamily sites (see Table 10.22-2) violates SB 478. The Staff Report notes CalHDF's last letter on this and claims that there will be a zoning text amendment adopted in conjunction with the ODDS that would bring the maximum floor area ratio to compliance with SB 478; however, Table 10.22-2 is still non-compliant with state law.

The City should note that SB 478 does not allow a local agency to impose a floor area ratio limit lower than 1.0 for developments of three to seven units, or 1.25 for eight to ten units. (Gov. Code, § 65913.11.) The City should therefore adjust the proposed zoning text amendment so that the FAR is not below this minimum standard.



CalHDF appreciates the City's effort to establish objective development and design standards. We remind the City, however, that it must take care to follow the law in doing so. The current proposal needs many revisions before it can be finalized and implemented in accordance with state and federal law.

Note that HCD retains authority to review the City's actions for consistency with its housing element. (Gov. Code, § 65585, subd. (i)). If HCD finds an action inconsistent with the City's housing element, it may issue a determination that the City has fallen out of compliance with the Housing Element Law, exposing it to possible legal penalties and the builder's remedy. (*Id.*) HCD may also refer the matter to the Attorney General for legal action. (*Id.* at subd. (j).) As a reminder, the builder's remedy will allow vastly greater density and height than the City's zoning code.

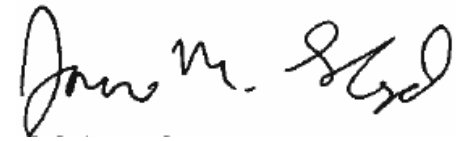
CalHDF encourages the Planning Commission to accept the staff's recommendation and delete the proposed Chapter 3 (Public and Private View Preservation Standards) from the ODDS. As discussed in this letter, the view preservation standards present enormous legal issues, and the City is much better off abandoning them.

CalHDF is a 501(c)3 non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at [www.calhdf.org](http://www.calhdf.org).

Sincerely,



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