

Housing Accountability and Enforcement Unit

Re: Comments on Sausalito's May 5, 2025 Draft Amended Revised Housing Element

From:

Linda Fotsch, Resident of Sausalito

Date: May 15, 2025

Dear HCD Review Team,

I respectfully submit the enclosed comments regarding the deeply flawed City of Sausalito's May 5, 2025 Draft Amended Revised Housing Element. My concerns are rooted in documented procedural failures, bad faith implementation efforts, and violations of both the letter and spirit of California's Housing Element and Fair Housing laws. This document reflects a pattern of exclusion, delay and Bad Faith that undermines both public trust and compliance with state Housing Laws

This most recent draft reflects a pattern of closed-door decision-making, manipulation of zoning designations, proposed removal of viable opportunity sites, and the misuse of purportedly "objective" design tools that, in practice, act as development deterrents. Despite the City's certified status, housing applications are not moving forward. Rather than facilitating new homes, the City appears to be creating intentional roadblocks—such as an untested "ViewSync" tool and arbitrary downzoning—that defy statutory obligations.

Lack of Transparency and Public Process

The May 5, 2025 Draft of the Amended Revised Housing Element states that it was revised from comments made by HCD. Yet the only recent HCD comment letter or comments made public was the HCD comment letter of November 4, 2024. If there were other review comments by HCD the Public has not been made aware of those. The last public review session of the Housing Element was on February 25, 2025. Since that date the public has had no opportunity to see, understand, or comment on the changes of this document.

Violation of Public Process requirements- (Gov Code 65583 (c)(9)) The California Housing Element law mandates a transparent and public process.

Comments by City Council members do not qualify as public involvement as the public has no input for meaningful discourse when presented with only decisions made in closed door City Council meeting sessions. However, new Housing Element revisions seem to have been substantially altered behind closed doors by the City Council and submitted to HCD, without public input, on March 27, 2025 and May 5 2025. Sausalito has chosen to disregard genuine public input and transparency-especially from marginalized or impacted populations- which is a defect in the validity of this draft.

Items publicly discussed and presented to the City Council, from the Sausalito Planning Commission, for further revision, were also disregarded and never followed up on. Some of these requests include: clarification of the confusing multi-layer zoning housing overlays and a request to make public a document of how Ordinance 1022 would actually be voted on; items incomprehensible by Sausalito's own Planning Commission; but all failed to have been addressed.

Even a much publicly discussed and debated item which City Council voted on; seems to have been changed in closed door sessions. The zoning change for, **Site 84 (MLK) to be rezoned at 29/acre**, was voted to be as such by the City Council; but this was disregarded and subsequently changed in closed door sessions to be implemented at a higher zoning density in this Draft revised document. This not only violates procedural requirements of **Gov Code 65585** but also undercuts the public trust in our City's decision-making process.

Bad Faith Actions and Fair Housing Concerns (Gov. Code § 8899.50, AB 686)

Sausalito appointed private ad hoc committees composed of vested NIMBY interests, for housing element changes who's concentrating of affordable housing in one area may constitute **disparate impact discrimination** under Fair Housing laws. These groups have exercised outsize influence in the redrawing of opportunity sites and downzoning, with the goal to protect their own neighborhoods rather than meet the city's RHNA obligations. The law requires "affirmatively furthering fair housing" across all neighborhoods—not ghettoizing low-income housing. This housing draft reaffirms an even larger percentage of housing to be put in the Northern part of town-the area of lowest income level and the furthest from the main transportation hub. Public statements from some appointed City representatives explicitly sought to avoid burdening existing wealthier southern Sausalito neighborhoods, which suggests a deliberate policy choice to place that burden instead on lower-income neighborhoods and residents. That violates both the intent and legal standard of equitable housing policy in California. Properties in the Southern wealthier downtown areas were down-zoned so as not to be developed and one site (Site 201), in this area, was proposed to be eliminated as an Opportunity site. This density was all added to the Northern part of the City; away from the wealthy neighborhoods. Site 201 (over ½ acre) was the most realistic opportunity site for development being centrally located, easily accessible, less than ¼ mile to the main transportation hub and located on the main fire evacuation route.

Housing was not produced in Sausalito with the older zoning density levels. Now, proposing to down-zone Opportunity sites along the main transportation corridor, with the additional constraint of Inclusionary Housing requirements, certainly would make infeasible for these properties to be developed- with the proposed decreased allowed density. Sausalito has benefited by having a Certified Housing Element- but property development owners have suffered with higher affordable unit requirements, and more restrictive development requirements (ODDS). This is contrary to Ca Housing laws and will not produce additional housing in Sausalito

Pattern of Delay and Obstruction

This Housing Element revision continues many years-long patterns of **deliberate delay and obstruction** of state housing mandates. Programs that originally had enforceable deadlines in the certified housing element were largely ignored and are now replaced with vague references of **“anticipated timelines”** and **“interim milestones,”** effectively removing any accountability. Even as the City delays its obligations, it continues to enforce tight timelines against housing applicants—creating an inconsistent and unfair regulatory landscape that contradicts state housing laws. This can be seen in the many times that applicants have had to submit and resubmit affordable housing applications- incurring duplicate submittal fees.

It is CLEAR that the City is once again positioning itself to seek an **extension or avoidance of enforcement** of Housing Element deadlines by shifting implementation targets into the future, without justification. This undermines the credibility of the Housing Element process and calls into question the City’s intent to comply with the law. Sausalito has coyly avoided putting Ordinances 1022 and 1128 on the ballot- long past the deadline of March 2024; this has delayed any certainty for property owners in the development process. The addition in this latest draft that adds the wording- that the City will **“seek declaratory relief in the Courts” to evade approving housing in these areas which are constricted by the Ordinances,** only verifies the City’s intent to not process housing applications. This legal threat promises certain protracted litigation for property owners to be able to develop their properties- clearly demonstrating Sausalito’s disregard for sincerity in complying with Ca housing laws.

ODDS

California Cities are required to provide streamline review and Objective Design and Development Standards that are identified to Applicants before submittal. The City on one hand insists that they already had ODDS in its standards and on the other hand is preparing standards and requests a date extension; for which they have had ample time to complete. Stated in the Certified Housing Element for multi-unit development and development in the Historic District-

“While Historic Design Guidelines accommodate rehabilitation and additions to residential properties, the Historic Guidelines limit the scale and mass of additions in a manner that is likely to preclude sites identified for rezoning under Housing Plan 4 from achieving the maximum allowed density. Program 16 ensures the Historic Design Guidelines will be revised to either exempt sites identified to accommodate the City’s RHNA, or to provide objective standards that do not limit building heights, mass, window placement or other features that would be necessary to achieve the maximum allowed densities] under Program 4.” HBR -92

“The Historic Guidelines do not establish any findings for project approval.” HBR-92

Yet the proposed Objective Historic Guidelines do not achieve this. These guidelines limit the height, massing, window size and placement and other features of proposed projects. Once

again, Sausalito is trying to reap the benefits of having a certified housing element and penalize any proposed development through manipulation of the ODDS.

Height, FAR and massing of buildings of the proposed ODDS is based on an **average unit size of 500 square feet** (page 15)., With no housing unit of 500 square feet or less having ever been sold in Sausalito; that square footage can only be identified as being based in **false reality**.

Coupled with **“inclusionary units must....contain on average the same number of bedrooms as the market rate units insuring that the inclusionary units will accommodate families with children to the same extent as the market rate units.”**- further show how faulty the idea that the AVERAGE unit size of 500 square feet should be used. If the average unit square footage is 500 sq ft then it would be anticipated that half the units would be equal to or less than 500 sq ft. That square footage would realistically only accommodate a studio apartment- not a unit to accommodate families with children. The proposed height, FAR, massing and square footage of the proposed ODDS is all based on a 500 square foot unit size. This calculation is very far from being correct or indicative of current housing units in Sausalito. This was a contrived number to limit height, FAR, square footage, massing and make development at the allowable levels impossible to be built. This is in direct conflict of Ca Housing laws and the promises made in the Sausalito Certified Housing Element to allow properties to be built at their maximum allowed density.

Page 15- HBR-105, 4th paragraph. Inclusionary Housing requirement- “requires 15% of all new units developed in a multi-family or mixed-use project of 4 or more units to be affordable to moderate-income households and **NEW section 10.44.190.C. 2 requires that 20% of all new units developed in commercial zones be affordable to moderate income households.**” This is suspect in that the commercial area is the very area that Sausalito has chosen to down-zone properties. The included increase of Affordable unit requirements would make these properties even more undevelopable. Also, it limits the Affordability to “moderate income units” bypassing lower income unit levels which would allow greater density with the Density Bonus Laws and creating a conflict as to if a developer had to also comply additionally with this “moderate affordability requirement” if applicants had already complied with a state law that allowed units for the “low and very low” affordability. This is a **Conflicting and Contradictory Inclusionary Housing Requirement**. Projects qualifying under State Density Bonus laws (**Gov Code 65915**) cannot be forced to add local affordability tiers that reduce economic feasibility or override state mandated pathways. This dual standard approach violates SB330 by reducing economic feasibility and making projects subject to conflicting rules that can only be resolved by discretionary action (eg- variance)

View Ordinance View Sync- Objective standards need to be **“standards that are clear, easily understood and uniformly verifiable, ensuring predictability for developers and streamlining the process.” “Standards that are defined as measurable, verifiable and knowledgeable to all parties before project submission, involving no personal or subjective judgement by public officials.”**

Sausalito has introduced an unvetted, unlawful and unvalidated tool developed outside normal procurement and public vetting processes. The City has failed to:

- Test the system publicly in an unbiased manner.
- Validate its measurements or assumptions by a universally recognized group able to make such reliable impartial opinions.
- Demonstrate any reproducibility or objectivity documented by a neutral third party.

By embedding ViewSync into the Housing Element and tying it to building massing, the City creates a **non-objective constraint** on housing development. That directly conflicts with **Government Code §65913.4** and other mandates for **objective, quantifiable standards**. The inclusion of subjective visuals and simulations that differ depending on user manipulation undermines the promise of predictable unbiased, by-right housing approval pathways.

This system allows for arbitrary, discretionary interpretation of visual impacts from surrounding properties, effectively enabling subjective and capricious rejection of housing proposals.

However, even worse, this system is not in existence. It has never been utilized before by any city, or anywhere in the world. It is an experiment that Sausalito is trying to cloak as an “objective standard” known and verifiable by all. This is a boondoggle fabricated to confuse and deny housing development. It is an experiment that will result in costly lawsuits for developers and Sausalito alike. It will deny new housing development in most areas of Sausalito through an easy subjective manipulation of a software system that can get various “view” results with a raising or lowering of a curser angle. **This is not an Objective Development Standard; it is a punitive weaponized abuse of the housing laws meant to deny housing applications.**

Page 10- Sausalito’s Certified Housing Element has been adopted to the General Plan. On page 10 as the City’s “alternative pathway” for acceptance, the City is offering a Subjective approval route of seeking a Variance if the City has made a less intensive use or reduced the intensity of land use that was allowed under the General Plan; so Sausalito can be viewed as in compliance with the HCA of 2019. This contradicts the housing laws with Certainty for developers. Developers should not have to bare the costs and time delay of **pursuing the subjective approval of a Variance** for Sausalito’s “changes of land use”. Plus, historically, Variances are rarely approved in Sausalito.

The statement that ODDS will be re-reviewed in 2 years and amended in 6 more months after consultation with developers and residents- if they constrict development; **is not acceptable. The ODDS will most certainly constrict development.** The basic premise that an average Sausalito home size is 500 sq ft- is far from being realistic. The city has had years to create appropriate ODDS and has failed. This has created barriers and costly delays for development in Sausalito. To delay developers 2 ½ more years to create a “fair” ODDS development plan is not acceptable. **An acceptance of the current ODDS should be NOT be considered and there should be no extension of approval date.**

Unfair Use of the Trak-it Tracking System and Project Interference

Sausalito has used the required Tracking System to undermine the integrity of development proposals. On page 11 -Sausalito will **“establish a permit tracking database that includes each project under consideration by the City, the application submittal date, the application completeness date, the application, technical studies, plans submitted, the project status, each hearing date before a decision-making body, the final decision date and the final decision.”**

Instead, for targeted projects, Sausalito’s permit tracking system has been used to insert **arbitrary and unofficial reports** into project records—some authored by City-affiliated individuals, others by unknown third parties—without proper notice, authorship, or any verification. For example:

- A letter from a City-appointed advisory board member attacking a pending application was posted as part of the public record, without due process.
- Unclear or extraneous references have been uploaded into project folders, potentially undermining the integrity of housing applications.

This creates an impression of **procedural bias**, and violates the **Housing Accountability Act** by creating unnecessary and prejudicial hurdles for applicants.

Closing

The City of Sausalito’s May 5, 2025 draft is not a good-faith attempt to comply with state housing law. Rather, **it reflects a sustained pattern of delay, bad faith, and manipulation of the site inventory, public process, and implementation programs.** These actions:

- Violate Government Code §§ 65585, 65863, and 65913.4.
- Undermine the principles of Affirmatively Furthering Fair Housing.
- Contradict the enforceability and transparency requirements of state housing law.
- Create exposure to legal challenge and HCD enforcement.

HCD should:

-Reject the May 5, 2025 Draft Revised Amended Housing Element on the grounds that it violates transparency, fair housing and housing element compliance requirements.

-Initiate enforcement proceedings against the City of Sausalito for its post-certification downzoning and proposed opportunity site removal.

-Order the immediate removal of the ViewSync tool and require all ODDS to be objective and not constrict development, be reflective of community standards for square footage of homes and be consistent with state law.

-Withhold further certification or impose financial penalties if the city continues to act in Bad Faith or delay implementation of required programs.

-Request complete documentation of all City Council communications, committee notes, and internal emails since January 2023 related to the Housing Element, zoning changes, or ODDS to assess whether there has been a coordinated effort to undermine compliance.

The City has had more than ample opportunity to comply with the law. If it now seeks another extension or delay, that request should be **DENIED** and the Certified Housing Element should be **ENFORCED** with its' implementation deadlines. The City of Sausalito must not be allowed to evade its legal housing obligations through opaque processes, manipulation of zoning tools, and discriminatory land use planning. HCD has both the authority and the duty to enforce state housing laws and ensure fair and equitable development practices.

I appreciate your attention to these concerns and am available to provide further documentation or testimony should you require it.

Sincerely,

Linda Fotsch

Resident, Sausalito, CA