



October 27, 2021

**VIA ELECTRONIC MAIL**

Hon. Nury Martinez, Council President,  
and Councilmembers  
Los Angeles City Council  
200 North Spring Street  
Los Angeles, CA 90012

**RE: Item No. 5 Agenda of October 27, 2021 – Proposed Housing Element Update**

Dear Council President Martinez and Councilmembers:

Housing is a Human Right is concerned that the Housing Element, in its current form, fails to meet the needs of low-income and unhoused communities and will lead to a continued increase in homelessness and gentrification throughout the City of Los Angeles without substantial modifications.

In the previous 8-year housing element cycle, the City of Los Angeles over-built market rate/luxury (above-moderate) housing by 70,110 units and underbuilt affordable (very low, low and moderate) housing by 35,024 units.

A status quo approach to policy will continue to widen this gap between the production of market rate/luxury housing for the affluent and the production of units for low-income / homeless housing for underserved communities. People of color are disproportionately represented in both low income and unhoused communities, raising issues of equity, diversity and inclusion in the Housing Element which does not adequately provide for the housing needs of these communities.

For these reasons, Housing is a Human Right opposes the adoption of the proposed Housing Element, unless amended in accordance with our environmental letter (sent under separate cover) and to make the following key revisions affecting the production of affordable housing units related to private housing development projects:

- **Enact Emergency City-Wide Inclusionary Housing To Fill The Gap** – Incentive-based programs have historically not worked to provide sufficient affordable housing within the City of Los Angeles. Based upon the City's

unprecedented 41,290 residents experiencing homelessness, and 1,383 deaths of homeless persons per year, it is imperative to exercise City emergency powers to make interim findings and impose an immediate city-wide inclusionary housing requirement on all moderate-income/luxury projects. Homelessness is a humanitarian crisis but it also presents a significant cost-burden to taxpayers. Developers who seek to build in the City of Los Angeles should be an integral part of solving that crisis by adhering to requirements for housing production for low income and unhoused populations.

- **Phase Out Above Moderate/Luxury TOC** – As evidenced by the under-development in affordable housing units and over-development of market-rate units in the previous 8-year cycle, City housing policies are creating an imbalance of market-rate/luxury to affordable units and therefore are not addressing the real needs of low income and homeless communities. We must end the City’s proposed reliance on the Transit Oriented Communities Density Bonus (“TOC”) program as a principal strategy to increase affordable housing in the City. Mathematically, the TOC program as applied to moderate/luxury housing projects, will never produce significant affordable units to meet the RHNA goals. TOC incentives, however, do remain relevant for 100% affordable projects and will help to close the widening gap between the City’s market rate and affordable housing units.
- **Protect Tenants Right of Return and One-for One Replacement** – Per the Housing Element, 25% of parcels in the recommendation Table 4.7 to be developed per RHNA in the Hollywood area alone have RSO units. As a condition to up-zoning, we must have an implementable policy to monitor, parcel by parcel, the right of return and one-for-one replacement of RSO units (including square footage and number of bedrooms consistent with the demolished apartment).
- **Quantify Capacity for Residential Units in Commercial Zones** - Existing zoning in the commercial zones of the City already have sufficient capacity to accommodate the Regional Housing Need Assessment (“RHNA”). The Housing Element uses a flawed model to contend there will be a shortfall of housing production requiring up-zoning. Such up-zoning would enable some 100% luxury projects without having to comply with any affordable housing component. This also undermines TOC.

### **The Housing Element Will Fail To Meet RHNA Affordable Mandates.**

Under the state’s revised RHNA process, the City has been assigned the daunting task of approving at least 456,643 new housing units of which 259,812 (57%) units must be affordable, and 196,831 (43%) may be above moderate-income/luxury income. The affordable unit breakdown as assigned in the RHNA process is as follows: of the 259,812

affordable units, 115,978 very low income, 68,743 low-income, and 75,091 moderate income.

In comparison, the City is about to close out its previous eight-year RHNA cycle where the City had the following results: of the total 117,088 housing units permitted, 105,522 (90%) were above moderate-income/luxury units, even though only 38% of the City's households qualified as above moderate-income in the 2010 census. The remaining 11,566 of housing units permitted were affordable. Under the City's current policies, this level of affordable unit production was a stunning shortfall: the total number of very low, low-and-moderate income units produced was only 10% of units approved over eight years! During this same period, the City's homeless population exploded on the streets to 41,290 -- a 6,000 person increase in the most recent year. These numbers establish that for at least the last 8 years the City has allowed itself to fall far behind in the production of affordable units of housing while approving a glut of above moderate-income/luxury units, many of which sit vacant as passive investments by foreign investors.

The new Housing Element Update was the opportunity for the City's planners to propose bold, emergency action to reverse the City's General Plan policies and programs leading to this failure to meet the housing needs of the City's most vulnerable. But City Planning's draft plan essentially says: "Stay the course. Rely mostly on TOC to be enshrined permanently into the City's community plans/zoning, and consider years from now *possible enactment* of an inclusionary housing requirement, as a massive and unnecessary upzoning occurs." Programs 48, 121, 125, & 126. The proposal is a prejudicial abuse of discretion. It not only fails to demonstrate its programs will realistically guarantee the required minimum affordable units will be permitted in the next 8 years, it is a shocking dereliction of duty given planners have to know the current strategy is making more residents homeless.

In Los Angeles, homelessness and deaths on the street rise yet there is no urgency by City planners to address this death toll while the City "studies the feasibility" of an inclusionary requirement in a drawn out two-phased study. We have seen this language in previous plans of the City when there is no intention of the Planning Department to ever carry it out. Our elected officials must intervene to modify the Plan.

**To Proceed Without An Emergency Inclusionary Housing Requirement Will Not Achieve Affordability Requirements As Set Forth In The RHNA Numbers And Is Not Proceeding In Accordance With Law**

Cities adjoining Los Angeles (Santa Monica, Pasadena, West Hollywood, and even County of Los Angeles) all have enacted inclusionary housing requirements for residential projects proposed within their boundaries. These programs are simple: a developer proposing to build more than a minimum number of units is subject to a mandatory affordable housing set aside (say, 15%) of affordable units in the proposed building. The cities have some exceptions/alternatives for off-site or in lieu fees, but they are usually at percentages higher than those required in the building. These ordinances

are straight forward to administer. They provide certainty in the development community. Construction cranes are up in these cities that adjoin the City of Los Angeles, despite the existence of strong enforcement of the affordable unit production requirements.

Yet, the City's proposed Housing Element Program 126 is couched in the most tentative and selective language possible: "Inclusionary Housing **Feasibility** Study." The City proposes to study "feasibility of inclusionary housing" for two years and make some recommendations to Council, then, if Council directs further study, to go into a second phase to determine what selected areas of the City might be appropriate for this citywide "selective" strategy.

The City Council needs to take control of its Housing Element planning process and turn the Titanic from the iceberg of bureaucratic indifference. With over 60% of renters living rent-burdened in Los Angeles and 41,205 people living on the City's streets, we cannot wait for a two-phased study before considering the most proven effective important Program to produce significant affordable units – an emergency inclusionary ordinance enacted under the City's police powers. On an emergency basis, the City Council has the authority to study and adopt the findings of adjoining cities as an interim factual basis for the City of Los Angeles to immediately impose an inclusionary housing requirement on each new housing application for 5 or more units submitted to the Planning Department.

In 2015, the California Supreme Court validated the legality of inclusionary housing requirement for rental or for sale units. In 2018, AB 1505 legislatively overruled *Palmer v. City of Los Angeles*, a case that impeded the inclusion of affordable units in housing projects developed in the City. Six precious years have been wasted since the Supreme Court decision. The City Council must move immediately on this critical program in the City's Housing Element. Without it, the City will have no backstop to demonstrate to state reviewers that it can realistically reach the RHNA affordable housing goal.

### **TOC For Private Above Moderate-Income Luxury Housing Worsens The Affordability Gap.**

A simple mathematical comparison illustrates why continued reliance of the TOC "incentive" to produce affordable units will only further impair production of affordable housing. The new RHNA affordable percentage required of the City is 57% of all residential housing in the City must be affordable and only 43% above moderate-income/luxury. But the TOC "incentive" program grants a significant unit density bonus to a developer who includes only 11% very low-income units in the complex, meaning the other 89% are above moderate-income/luxury units. The modest number of 100% affordable housing units produced each year cannot make up for the massive disparities of the TOC "give away" to developers. Continuation of the TOC, or even worse, its permanent enactment into the Municipal Code would violate the goals and policies of the Housing Element Plan to promote equity – instead it would perpetuate the institutional racism already built into the City's planning policies.

### **TOC Incentives Remain Appropriate For 100% Affordable Projects.**

Non-profit affordable housing providers can expedite the development of affordable housing projects with some of the incentives available through the TOC Program, however, because the projects are designed as 100% affordable units, these TOC projects do not widen the gap between affordable and market-rate units as occurs if TOC is permitted to benefit private developer seeking to build housing.

### **The Zoning Capacity Along Commercial Corridors Can Meet The Entire RHNA Housing Requirement Without Need For Upzoning.**

Experienced former City Planners such as Dick Platkin or Fran Offenhauser have submitted substantial comments why the commercial corridors of the City already contain sufficient residential capacity to accommodate the entire RHNA housing allocation. AHF adopts those comments in this matter. Without an inclusionary zoning requirement in place that guarantees the development of affordable housing, the up-zoning component should be deleted for projects that don't produce at minimum 20% affordable housing units.

Moreover, for developers whose parcels are up-zoned without the 20% affordable requirement, they will be able to develop higher density without having to use the TOC density bonus program. This also undermines the stated goals of the Housing Element.

### **SUMMARY**

For the foregoing reasons, the City's Proposed Housing Element should, as a critical reform, be modified as outlined herein.

Warm regards,

Susie Shannon  
Policy Director, Housing is a Human Right