

Regulation of Housing Development

WHITE PAPER

Prepared as Part of the
San Francisco Planning Department's

Housing Affordability Strategies



San Francisco
Planning

Table of Contents

Introduction	3
Timeline of San Francisco Development	5
Before Modern Zoning	5
Post WWI – the Rise of Zoning and Suburbanization	7
Post-World War II Federal Housing Programs, Exclusionary Zoning and Urban Renewal	9
Housing Development Today	11
Understanding Development Controls	15
The Planning Code and Zoning Controls	16
Interpretative Controls	17
Procedural Controls and Fees	17
Recent Development Regulations and Strategies	19
State Housing Laws and Local Implementation	19
Local Programs	20
Implementation and Process Improvements	22
Potential Future Opportunities	23
Consider Regulations through an Equity Lens	23
Increase Housing Capacity	23
Streamline and Simplify Project Approval Process	24
References	26
Endnotes	27

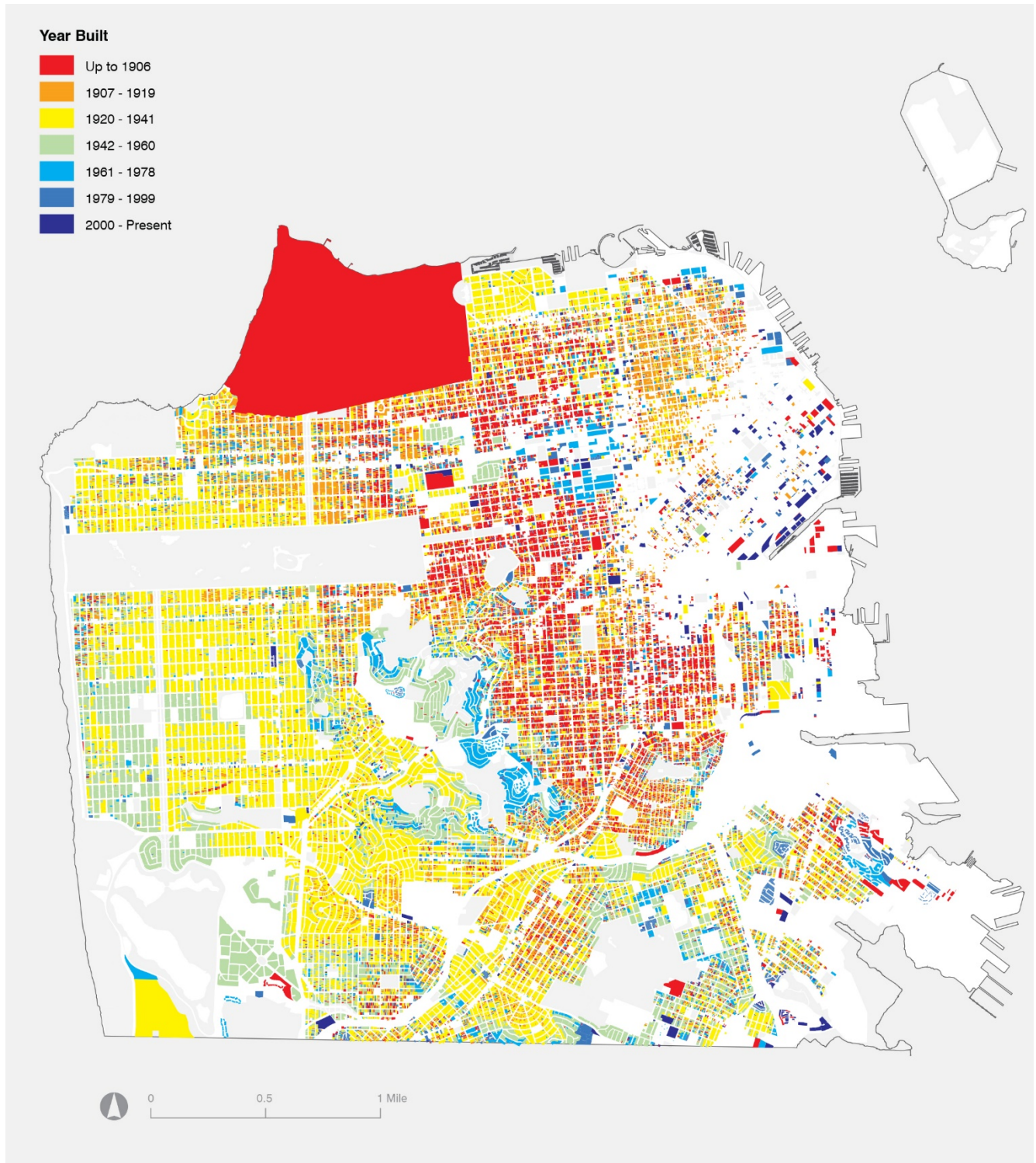
Introduction

The Housing Affordability Strategies (HAS) examines how the City of San Francisco can improve housing affordability over the next 30 years, particularly for low- and moderate-income households. The HAS analyzes how to achieve San Francisco's housing targets – created both through Mayoral action and the will of the voters – of 5,000 new housing units per year, at least one third of which should be permanently affordable at low and moderate incomes. In addition, the HAS analyzes policies and programs to preserve affordable housing and to protect and stabilize residents.

This white paper accompanies the primary HAS report with more detail on the complex relationship between development regulations and housing affordability in San Francisco. Development regulations govern how land can be used in San Francisco and ultimately control how much and where housing can be built in the city. Such regulations derive from the police power of the State to protect and enhance the health, safety and general welfare of the population. Across the United States, including in the State of California, much of this responsibility has been delegated to local municipalities through various planning- and zoning-enabling legislation.

Much of the contemporary debate around housing in San Francisco and California centers around the role development regulations play in housing development and affordability. San Francisco has a complex system of development regulations, developed over time to serve the changing context of a growing, diverse, and unique city. This paper starts with a brief history of land use in San Francisco that highlights the roles that local planning and zoning had in the patterns of racial and social segregation shaping our city today. This is followed by an overview of the main local tools that guide housing development and affordability and a perspective on potential future regulatory strategies to support housing affordability and address social and racial equity.

Figure 1. San Francisco Housing by Year Built



Timeline of San Francisco Development

Before Modern Zoning

Early development in San Francisco long predates the local regulatory controls – first introduced in 1921 – which guide the city’s growth today.

The earliest known inhabitants of the San Francisco Peninsula were indigenous Native Americans, including the Ohlone tribes which led riparian-based lifestyles along the shores of the Bay. As non-native explorers and colonists began to arrive in the area, they positioned settlements alongside the existing village sites. The Spanish Military outpost (Presidio) was collocated with the village of Petlenuc at the mouth of the Bay in 1776; concurrently the Catholic Franciscan Mission Dolores was established near the villages of Chtchui and Sitlintac, on the stream that came to be known as Mission Creek.

When Mexico won independence from Spain in 1821, San Francisco and the Alta California territory came under the jurisdiction of the Mexican government. International trade, which had been prohibited under Spanish rule, began to flourish, and by 1835, a small civilian commercial port, the Pueblo of Yerba Buena, was established in the area of present-day California and Montgomery Streets.

Enduring development patterns were established in Yerba Buena. In 1839, the 50 Vara Survey platted the area around Portsmouth Square. This first survey established a rectangular grid of twelve blocks aligned to the cardinal directions. In 1847, Market Street was mapped out from NE to SW on a diagonal to the original street grid. Soon thereafter, the 100 Vara Survey platted the area south of Market Street on a street grid aligned orthogonally with Market, and with quadruple-sized lots, in conflict with the 50 Vara grid to the north. This counter-alignment of surveys, platted at the birth of the city, endures in the street-and-block patterns north and south of Market Street.

Upon gaining control of the Alta California territory from Mexico after the Mexican American War the United States occupied Yerba Buena and changed the village name to San Francisco. Transfer of control of the territory in 1848, followed immediately by the discovery of gold in the Sierra Nevada foothills, brought swift and dramatic change to the city. By 1852, San Francisco had transformed from a quiet harbor of 400 inhabitants into an instant boom town of tents, shacks, and cabins housing a diverse, international population of approximately 35,000. Over the subsequent decades, the provisional city began a long transition toward permanent settlement. As population growth continued, and squatters began occupying the lands further to the west the city grid extended into a vast Western Addition as far as Divisadero. The 1855 Van Ness Ordinances also set aside certain blocks as open space, including today’s Alamo Square, Duboce Park, and Jefferson Square. The final boundaries of the city were set by the Consolidation Act of 1856, which unified the City and County of San Francisco government and separated it from the County of San Mateo.

During this period, specific regulation of land uses and buildings was not the rule, though several early ordinances did start to set regulate locations of certain uses. In 1853, 1864 and 1867, the City passed ordinances restricting the locations for hog farms and slaughterhouses. Other early land use ordinances were racially motivated. The 1870 Cubic Air Ordinance¹ imposed fines and jail time on landlords and

renters who lived in rooming houses primarily found in Chinatown that did not meet requirements of 500 cubic feet of air per person. Chinese immigrant laborers lived in these crowded rooming houses largely because they were not able to rent or own in other areas due to discriminatory housing practices. In the 1880s San Francisco targeted Chinese-owned laundries by selectively enforcing a rule that laundries be located in brick buildings (most laundries at the time were in wooden buildings).² Chinese laundry owners ultimately won their discrimination case in the U.S. Supreme Court.

Residential neighborhood development remained compact at first, limited by sparse transportation routes to the Port and adjacent commercial and industrial areas, as well as by outstanding land claims of Mexican rancheros. However, completion of the Transcontinental Railroad in 1869 facilitated the importation of people (laborers and consumers), trade, and building materials such as brick and stone. Locally, mass transit provided a means for people without independent transportation to live further from the commercial and industrial core, beyond walking distance, and residential streetcar suburbs began the expansion that would continue through the turn of the century.

By the late 19th century, cable car lines and electric streetcar lines ran on most major streets of San Francisco, extending earlier housing patterns further westward and southward. The removal of all cemeteries from the city around the turn of the century also opened large tracts of land for residential development. By the early 1900's residential neighborhoods had expanded radially, in an arc from the historic commercial center, westward to Pacific Heights and the Inner Richmond, through the Western Addition and Panhandle areas, southwest to Upper Market, Castro and Noe Valley, and south through the Mission. In the absence of modern land use regulations, these early neighborhoods developed with a variety of housing types – hotels, boarding houses, apartments, flats, townhouses, rowhouses, triplexes, duplexes *and* single-family homes – often with commercial and other uses mixed in.

On April 18th, 1906, a massive earthquake struck San Francisco, destroying approximately 28,000 buildings and leaving more than half of San Francisco's then population of 250,000 homeless. Rebuilding of the city began within months of the 1906 disaster, with an early focus on the reconstruction of the Downtown commercial district, which was entirely rebuilt and modernized within three years. About 20,000 buildings, commercial and residential, were built in those three years. (Johns 2018) The immense South of Market district, which was previously a mix of working-class residences and industry prior to the disaster, was rebuilt as primarily industrial and large-scale commercial. Higher-density housing was constructed in rebuilt and surviving residential neighborhoods, which increased in population. Higher-income housing moved westward, while lower-income housing was pushed farther south. In order to accommodate the urgent citywide housing needs, multi-unit flats were increasingly constructed in all residential neighborhoods. As much of the post-1906 development effort was focused on rebuilding and infill, the footprint of the city expanded only modestly during this time (notably in the Presidio Heights, Richmond and Inner Sunset) and the overall mix of housing types throughout the inner-ring neighborhoods continued to diversify.

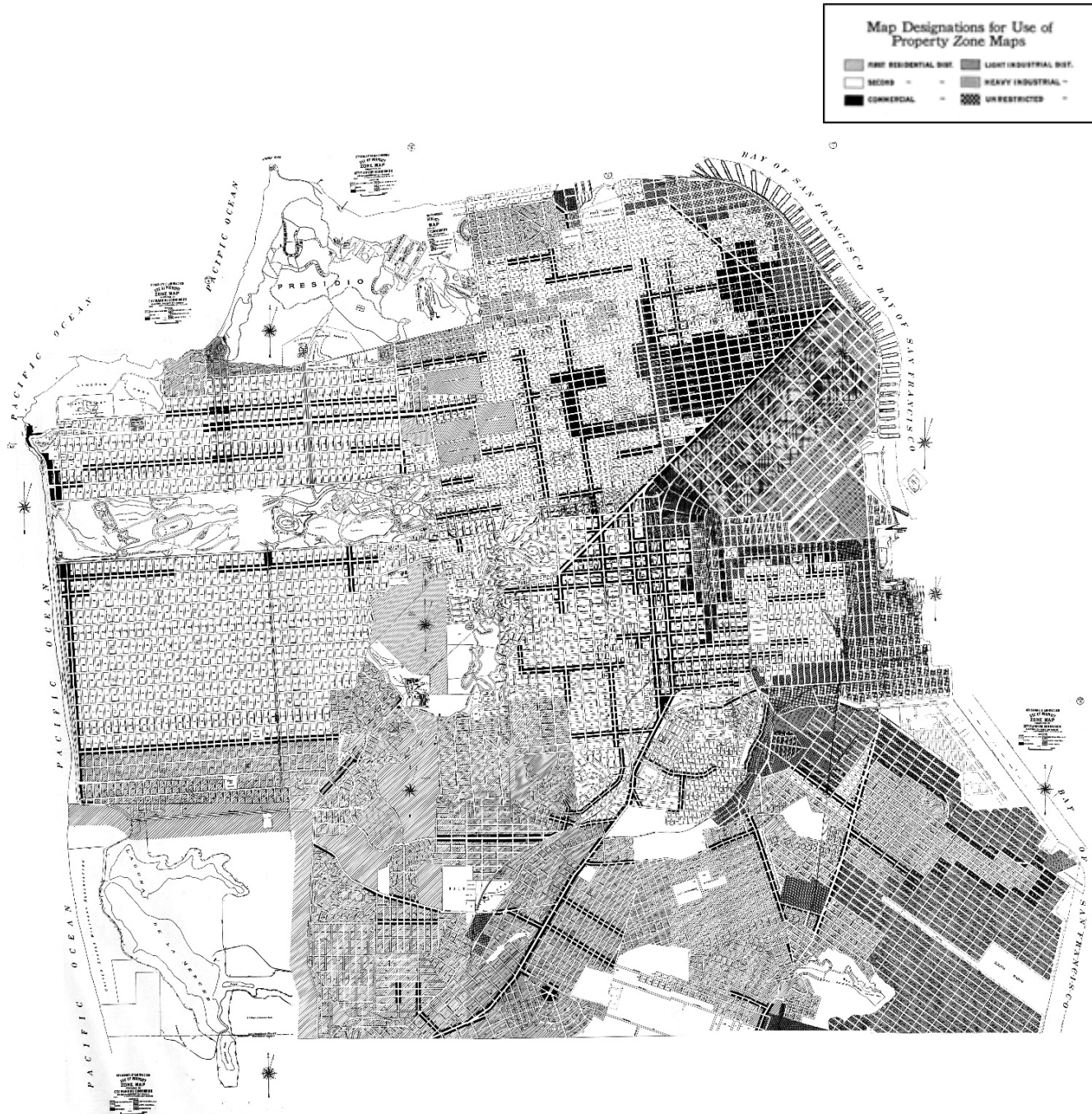
Post WWI – the Rise of Zoning and Suburbanization

Aside from the adoption of a handful of nuisance laws and racially motivated ordinances, San Francisco neighborhoods expanded outward from the historic core in a largely unregulated manner up through World War I. This rapid, unencumbered expansion – fueled by macro-forces of industrialization and immigration – came with myriad growth challenges including public health and sanitation, waste treatment and disposal, water supply and distribution, and housing demand and overcrowding.

These growing pains were met with the rise of the American Planning Movement. Rooted in the City Beautiful and Progressive movement ideals applied to local governance, Planning took as its charge the promotion of the general welfare and the preservation of collective, communitarian goods and values through the regulation of land use. Underlying these municipal reform movements was an unspoken emphasis on the restoration of physical, social, cultural and political order (power) to the majority under perceived threat from waves of immigration and migration. Early land use regulation thus focused on the preservation of social norms through management of nuisance and the promotion or maintenance of racial segregation.³

In California, as in many other states, the Progressive reaction against previously unregulated urbanization took the form of the City Planning Enabling Action of 1915, formally empowering cities to create city planning commissions. This was shortly followed by the 1917 California Zoning Enabling Act, which paved the way for the creation of local development controls. Thusly enabled, after WWI, San Francisco's newly appointed Planning Commission moved quickly to craft the City's first Zoning Ordinance. Adopted in 1921, the Ordinance introduced the first explicitly restricted Single-family housing district (1st Residential), along with a general housing district (2nd Residential), Light and Heavy Industrial districts, a Commercial district, and an Unrestricted District. The Ordinance was limited in scope, and did not include provisions for height limits, lot area minimums, rear yard or open space requirements, off-street parking requirements, or sign restrictions. However, it did largely reflect and extend pre-existing development patterns, and thus served to reinforce the racial and social structure of the time. A uniform setback ordinance was added in 1922, and height limits were added to residential areas in 1927. Though it underwent modest changes over the years, the 1921-1922 Zoning code governed the city's development until 1960.

Figure 2. Map of 1921 Zoning Ordinance Zoning Districts



Up until the 1920s, most of the city's "Outside Lands" on the western half of the peninsula remained sparsely developed. A nationwide economic boom during the 1920s, coupled with the opening of streetcar tunnels in 1918 and 1928 and the early adoption of automobiles, spurred residential development in outlying western areas of the city. Consequently, vast areas of the Marina, the Sunset and Richmond Districts, and the Excelsior District, were built from the 1920s through the 1940s with tract housing, primarily single-family dwellings with integral garages. This period correlated with the mass adoption of automobiles, enabling development in farther-out areas not yet served by public transportation.⁴

Post-World War II Federal Housing Programs, Exclusionary Zoning and Urban Renewal

By the end of WWII, vacant land in San Francisco had mostly been built upon, with some notable exceptions in Outer Sunset, Park Merced, Merced Heights around Twin Peaks, and in the remote parts of the south surrounding John McLaren and Crocker-Amazon Parks. During the war, San Francisco had reached its previous peak in population (surpassed in the 2000 Census) as people from all over the country came to work in war industries. After the war, the Bay Area's population exploded, mostly into the suburbs. During this period, the city's population declined while the region's doubled. The sense of decline caused by this context, and a desire among city leaders to compete with new, expanding suburbs led to two policies that would dramatically affect the shape of San Francisco: Urban Renewal and the downzoning of residential neighborhoods.

In December of 1945 the San Francisco's nascent Planning Department produced the city's first General Plan, adopted by the Commission in December of 1945.⁵ Rather than a fixed vision of the city's future, the Master Plan was intended to serve as a living document, to be amended as the city changed. The plan consisted of three sections. The "Transportation and Utilities Plan" aimed to coordinate the city's large public works project, including the state's proposed network of new freeways. The "Land Use Plan" built off of survey work conducted during the Depression.⁶ The final part addressed the so-called "Redevelopment of Blighted Areas."

The 1945 General Plan identified the Western Addition, South of Market, Chinatown, the Mission, and Bayview/Hunter's Point as "general areas in which conditions indicative of blight are found."⁷ "Blight" was the word used to describe impoverished neighborhoods that planners believed needed to be completely rebuilt. The implications were that "blight" stood in the way of progress, that it could spread, and that it needed to be removed before it killed the city. It was a deeply political term, firmly rooted in structural racism, which relied on fears of white flight and urban disinvestment to justify the wholesale removal of communities of color. In the years that followed, San Francisco's powerful Redevelopment Agency would undertake several projects that directly caused the destruction of several low-income neighborhoods and displacement and further segregation of the city's communities of color.

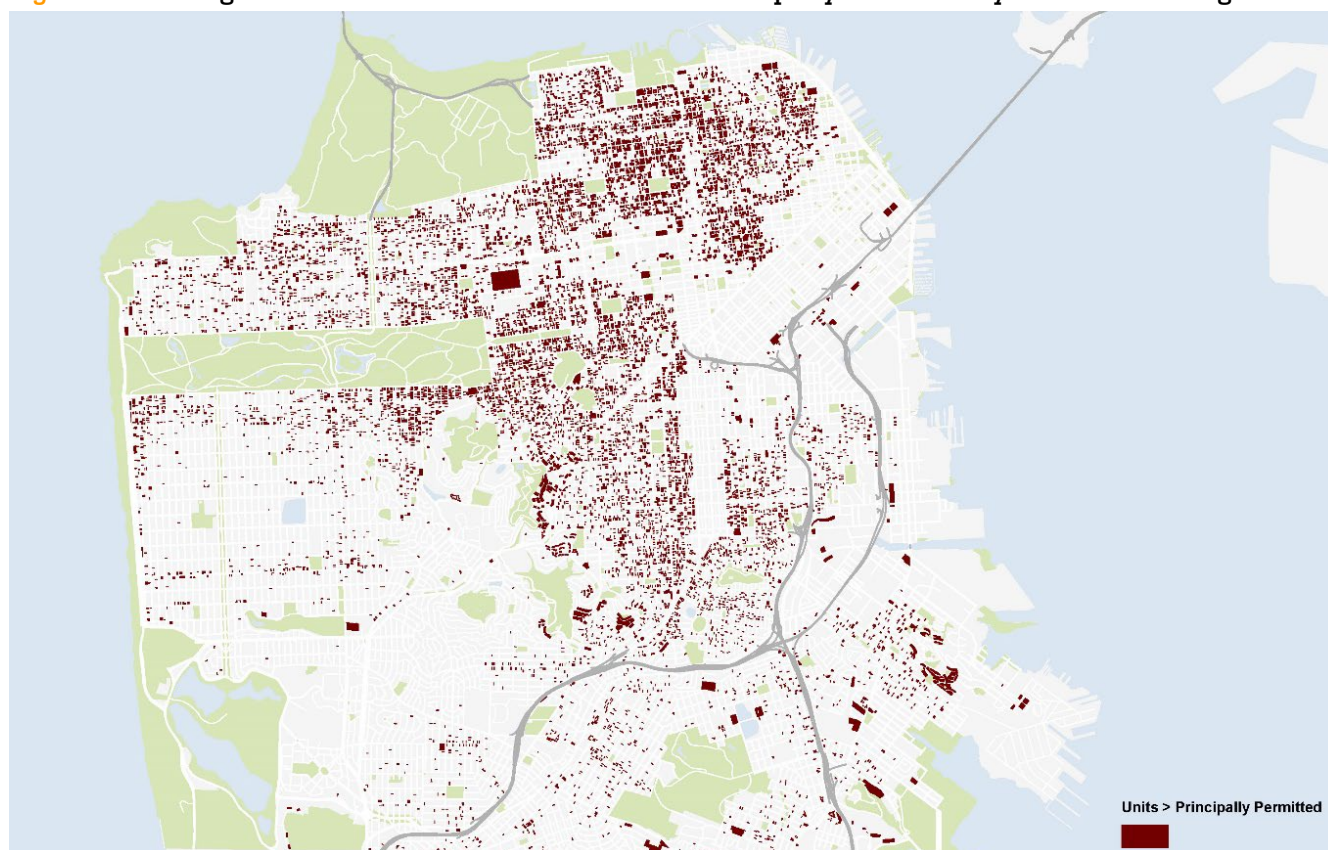
A major change to the way that land use was regulated in San Francisco was taking place in parallel to Redevelopment. In 1954 a zoning battle erupted in the Sunset District between the Board of Governors of Shrine Hospital and a builder who had obtained a permit for a proposed motel on a neighboring property.⁸ The property's R2 zoning allowed hotels; however the increasingly outdated zoning ordinance had not anticipated the development of motels. Facing this decision, the Planning Commission decided to seek a City Attorney opinion as to whether they had the responsibility and the authority to determine the case.⁹ In response, the City Attorney clearly affirmed that the city had "supreme control" over the issuance of building permits under the authority of its so-called "police power," and that the city's laws invest the Planning Commission with the power to exercise its "sound discretion" in determining compliance with the code.¹⁰

Though the letter called this power "a sensitive discretion and one which must be exercised with the utmost restraint," it greatly enlarged the Commission's authority. As a public body, it also greatly enlarged the public's ability to participate in the planning process, creating the authority by which individuals may request a project undergo a discretionary review hearing. This decision continues to set

San Francisco's planning processes apart from most other jurisdictions where most projects are approved "by right" of applicable planning and zoning laws without the need for discretionary decisions.

Also, during this period, a series of decisions further restricted types of uses and residential densities allowed in outlying residential districts. A 1978 rezoning refined residential zoning controls with the adoption of new RH (residential house) and RM (residential multi-family) districts, still in existence in much of the city today. These rezonings significantly reduced the zoned capacity for housing on the West Side of the city, even changing allowed densities on thousands of existing multi-family properties, which are now considered non-conforming to the current zoning (see below map). As a result of this, much of the city we see around us today could not be rebuilt as it is under today's zoning.

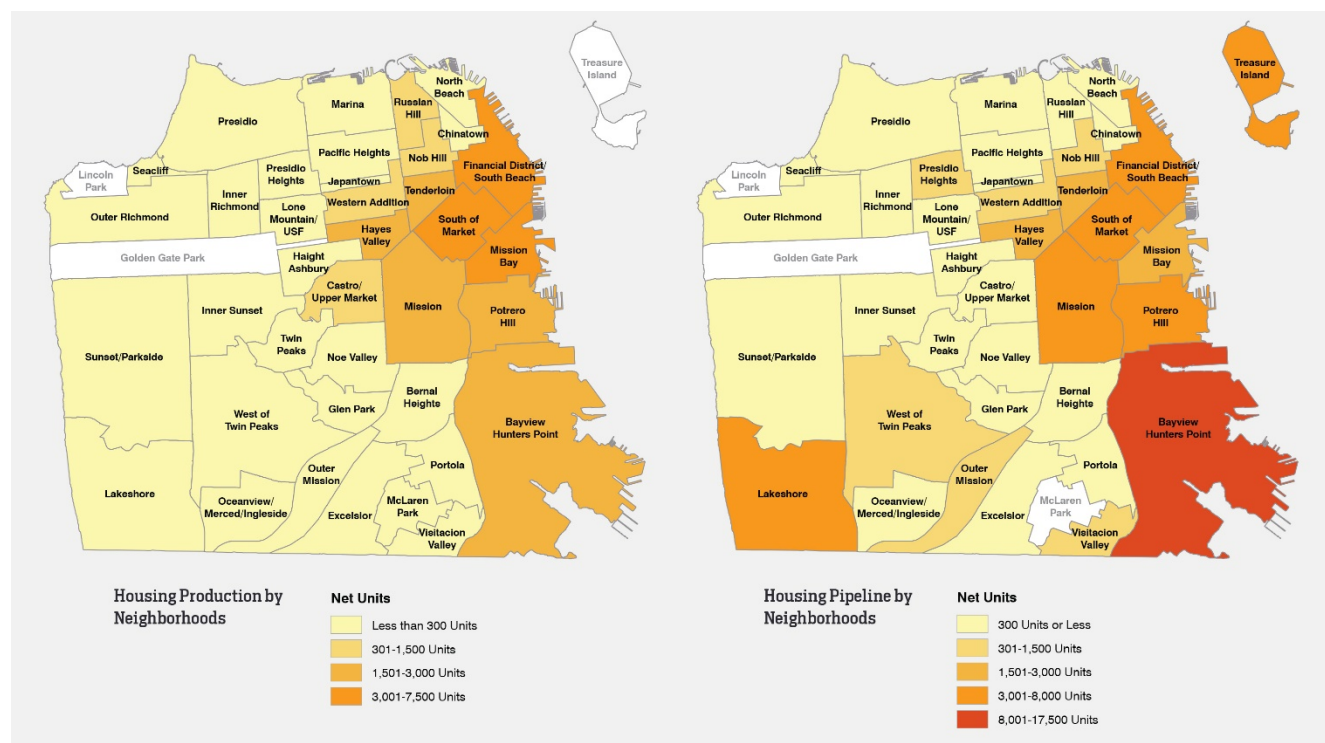
Figure 3. Buildings with Number of Units Greater than Principally Permitted by Current Planning Code



Housing Development Today

Construction of new housing in San Francisco since the year 2000 has taken place largely in the eastern third of the city, in areas rezoned under Area Plans, Redevelopment areas, or in large master-planned Development Agreements. With the notable exception of Parkmerced in the southwestern part of the city, the majority of homes planned and permitted for future construction are also on San Francisco's east side.

Figure 4. San Francisco Recent Housing Development and Future Pipeline by Neighborhood



This concentration is a direct result of city planning and policies, which have aimed to reimagine formerly industrial areas, naval bases, brownfield land, and areas formerly covered by freeways as residential and mixed-use neighborhoods. In the early 2000s, the city undertook several area planning efforts to rezone existing neighborhoods to accommodate more housing. The resulting Area Plans (Eastern Neighborhoods, Market-Octavia, Rincon Hill, etc.) featured higher-density zoning in locations appropriate for housing and implemented impact fees to pay for associated infrastructure improvements to accommodate new growth. In addition to the Area Plans, large Redevelopment Plans have been approved in Mission Bay on former railyards, for Hunters Point Naval Shipyard, and the site of the former Candlestick stadium creating significant capacity for housing development. Large Development Agreements, that allow additional housing and commercial development in exchange for affordable housing, public space, and other community benefits, have also been negotiated for Treasure Island, Park Merced, India Basin, Mission Rock, Pier 70, and Potrero Power Plant among others. Nearly all major Area Plans, Redevelopment Plans, and Development Agreements are located in neighborhoods on the east side of the city. It is also on the east side that many of city's communities of color and low income households reside.

Table 1. Housing Production by Neighborhood 2005 to 2018

	<i>Neighborhood</i>	<i>Net New Units</i>	<i>New Affordable Units & ADUs*</i>	<i>% of the city's new units</i>	<i>% Total Affordable & ADUs</i>
1	Financial District/South Beach	7,382	840	20%	9%
2	South of Market	7,123	1,979	20%	20%
3	Mission Bay	5,970	1,361	16%	14%
4	Bayview Hunters Point	2,310	1,625	6%	17%
5	Tenderloin	2,294	1,015	6%	10%
6	Mission	2,109	697	6%	7%
7	Potrero Hill	1,932	204	5%	2%
8	Hayes Valley	1,647	345	5%	4%
9	Western Addition	978	482	3%	5%
10	Nob Hill	575	42	2%	0%
	Other 29 Neighborhoods	4,046	1,129	11%	12%
	Total Citywide	36,366	9,719	100%	100%

*Accessory Dwelling Units (ADUs)

Recent housing production and the future pipeline – both market rate and affordable – are heavily concentrated in certain zoning districts shown by simplified characteristics below. Areas where density is based on form-based controls, or “form-based density,” account for most recent housing production. Form-based zoning districts use rules such as building height and bulk, requirements for multi-bedroom units, open space and rear yard setback requirements, as well as other controls to shape what types of buildings are allowed and determine the allowable number of units. Most Downtown commercial zoning districts and Redevelopment areas use form-based zoning controls, which provide flexibility to increase the number of housing units per acre. Form-based zoning is almost exclusively found on the Eastern Side of the city as shown in the zoning map that follows.

In contrast to the zoning controls in many areas of the Eastern side of the city, the Western two thirds of the city have the most restrictive zoning, RH-1, RH-2, and RH-3, with one, two, or three units allowed per lot, respectively. These zoning districts combined represent 70% of residential land but only 7% of recent housing production in San Francisco. There are also a number of zoning districts found throughout the city, such as Neighborhood Commercial (NC) and Residential Mixed (RM) districts, that allow multifamily housing but restrict the number of units based on the square footage of the lot (these districts may allow one unit per 800, 600, 400, or 200 square feet of lot area). These density-restricted multifamily zoning districts often allow fewer housing units than in form-based zoning districts, even when both zoning districts allow the same size of building due to rules on building form such as height and bulk. Density restrictions ultimately reduce the amount of housing provided, including affordable housing, and may not be clearly aligned with other zoning and design controls.

Recent City efforts (i.e. ADUs and HOME-SF)) have allowed more housing opportunities in areas of the city where zoning otherwise limits the number of housing units permitted. The Trends and Opportunities section of this white paper includes potential strategies to address this challenge and ensure San

Francisco’s development controls can lead to an equitable distribution of new housing opportunities throughout the city.

Figure 5. San Francisco Current Zoning Categories

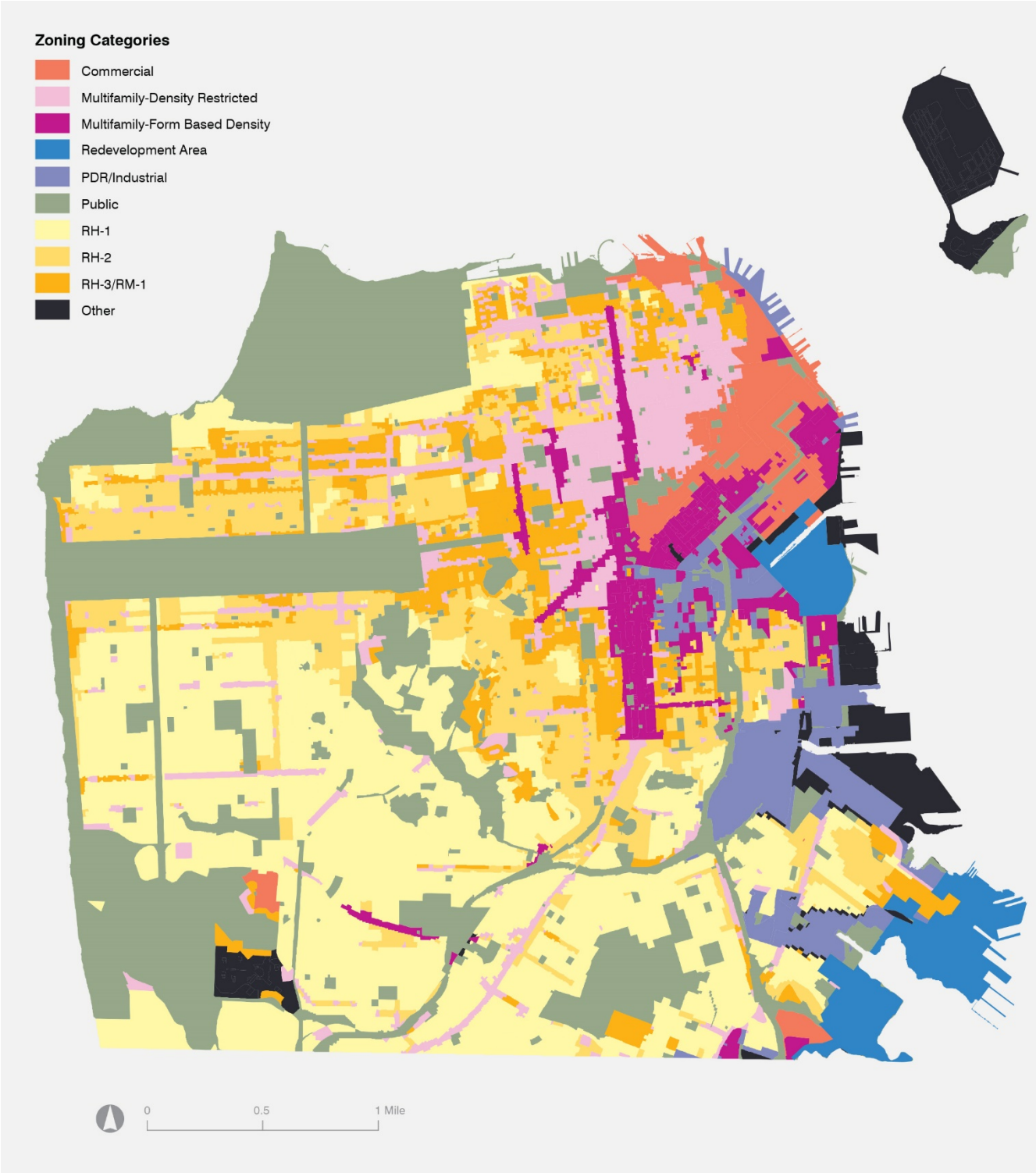


Table 2. Housing Production by Zoning Categories 2005 to 2018

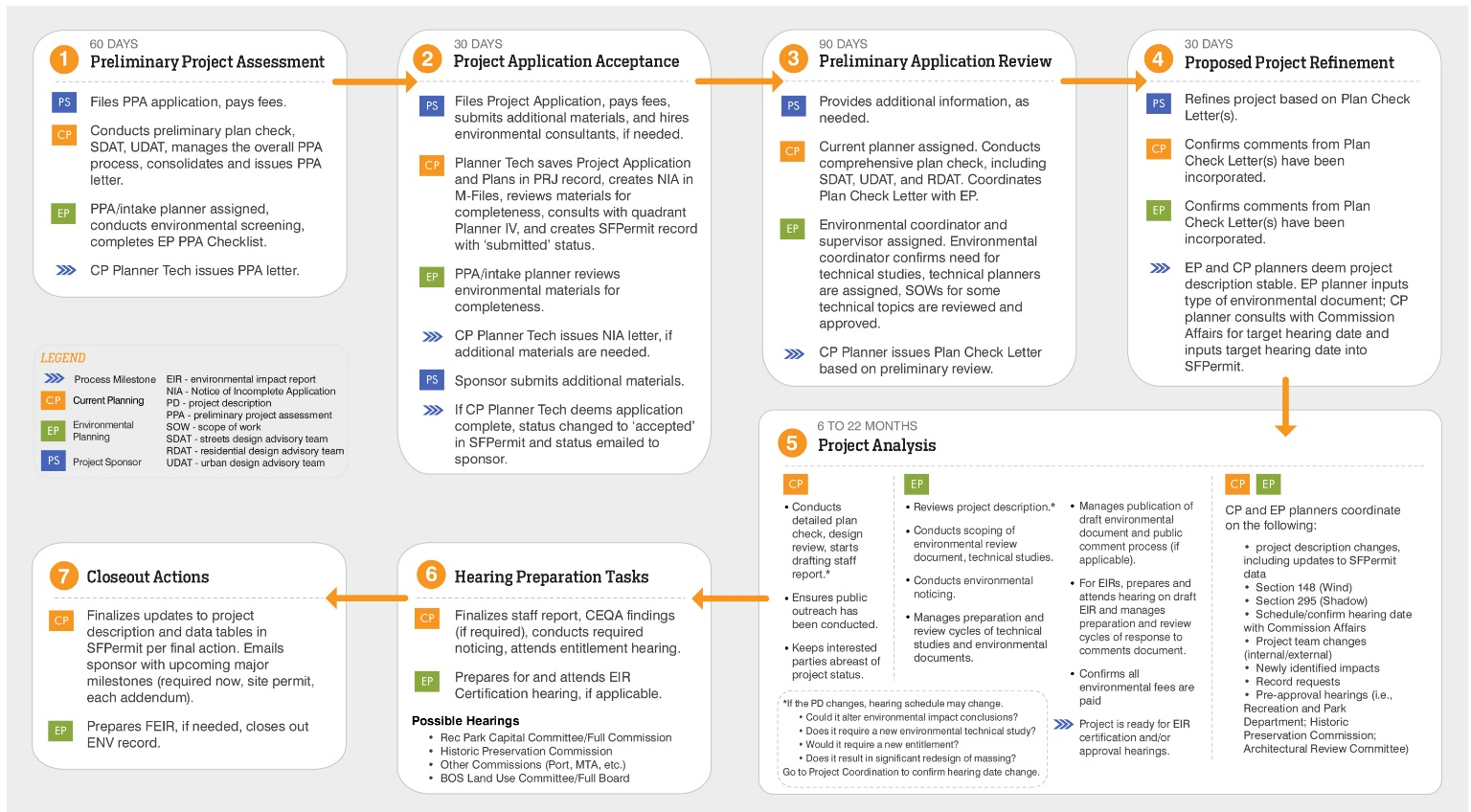
<i>Zoning Category</i>	<i>Net Units</i>	<i>Affordable Units</i>	<i>% Total Units</i>	<i>% Affordable Units</i>	<i>% Residential Land</i>
Multifamily Form-based	15,641	3,566	43%	37%	7%
Commercial (Mixed-use)	8,786	1,847	24%	19%	5%
Redevelopment Area (Mixed-use)	4,849	1,094	13%	11%	5%
Density-restricted Multifamily	3,299	933	9%	10%	12%
RH-3/RM-1	1,677	1,100	5%	11%	11%
RH-2	816	495	2%	5%	18%
RH-1	147	33	0%	0%	41%
PDR/Industrial	750	413	2%	4%	0%
Public	401	238	1%	2%	0%
Total	36,366	9,719			

Note: Commercial zoning and redevelopment areas typically allow residential and commercial uses. PDR and Public sites typically are not residential but residential projects may be allowed. ADUs are considered affordable at moderate incomes per state policy.

Understanding Development Controls

San Francisco houses over 880,000 people¹¹ in just 47 square miles, making it the second most densely populated major city in the United States. The city's dramatic geography/topography, numerous social, cultural and political movements, and unique and diverse population over time have shaped a system of development regulations that is among the most complex in the country.

Figure 6. Project Intake, Environmental Review and Approval Process



This flowchart provides an overview of Planning Department's project review and approval procedures for projects with two or more housing units.

In addition to determining the process and affecting the time and cost required to build housing, San Francisco's development regulations govern how land can be used and ultimately control how much and where housing can be built in the city.

San Francisco's General Plan is the document that sets the city's vision for the future, serving to guide the City's evolution and growth over time. The General Plan serves as the foundation for local land use planning in San Francisco, including a comprehensive set of objectives and policies that influence how we live, work, and move about, as well as the quality and character of the city. The General Plan reflects community values and priorities through its public adoption process, ensuring both private development and public action conform to this vision. All land use ordinances and policies flow from the General Plan

and must be consistent with the general plan. Individual development projects must also be found consistent with the general plan for approval.¹²

There are four primary types of development regulations described in this section. The most common and widely recognized category of development regulations are the controls commonly referred to as Zoning. In addition to Zoning, a second category of interpretive controls supplement and modify empirical standards in the form of contextually applicable Design Guidelines. Together, the objective and interpretive controls contained in Zoning and applicable Guidelines establish what can be built on a site. A third class of development regulations are the procedural requirements related to the review and approval of development projects. Finally, financial obligations in the form of various application and impact fees form the fourth primary type of development regulation.

Unlike in many other cities, issuance of the vast majority of permits in San Francisco is considered a discretionary action. This means that most permits (even electrical or plumbing permits, for example) are appealable by any member of the public. Further, because these actions are considered discretionary, they are subject to the California Environmental Quality Act (CEQA). Some 5,500 projects get some level of CEQA review in San Francisco annually, and the San Francisco Planning Department reviews more permits for development in a year than the Planning Department in New York City, a city 10 times the size of San Francisco. The chart on the previous page shows a simplified version of the steps a typical infill housing project must go through in San Francisco to get approved at the Planning Department.

The Planning Code and Zoning Controls

The Planning Code and Zoning rules include both objective, quantifiable regulations as well as more qualitative regulations. While regulations affecting development are found in many parts of the Municipal Code, the primary body of the San Francisco's development controls reside in the Planning Code, created in part to: 1) guide growth in accordance with the City's General Plan; 2) protect the character and promote the use of areas of the city for the benefit of its residents; and 3) secure safety from hazards, provide property access, and maintain environmental quality (including adequate light, air and privacy) indispensable for beneficial property use and the retention of value. While San Francisco's system of development regulations has historically proven useful in advancing these and other city priorities, current planning code controls also create considerable obstacles to advancing greater housing affordability.

After 100 years of additions, the San Francisco's Planning code has become labyrinthine. The current Planning Code comprises nearly 840,000 words nearly 5 times the estimated 170,000 words in current use in the English language. The Code defines 116 distinct Land Uses within 207 Zoning and Special Use Districts (some limited to a single parcel). Moreover, the Code is frequently amended (an average of 24 times per year in each of the last two years), creating additional administrative challenges for timely project review and approval. Procedural requirements add time; time costs money, further driving up the cost of production, which impacts housing affordability.

Zoning

In San Francisco, Zoning specifies how land can be used, conditions and restrictions that apply to certain parcels or land uses, and controls related to the allowable building envelope. For example, Zoning regulations:

- Determine how land is allotted in use zones and what types of uses are allowed within each zone;
- Limit the intensity of a use on a site – the floor area of a commercial use, the number of dwelling units, etc.;
- Govern sizes, heights and shapes of buildings and, in some cases, required space between buildings;
- Require accommodations for access and service such as bicycle parking spaces or loading;

Interpretative Controls

Design Guidelines

Design Guidelines implement the Urban Design policies of the city by reinforcing compatibility with local character, placemaking, livability, and sustainability based on the conditions unique to a specific site. Design guidelines are interpreted by professional staff experienced in urban design and architecture and applied based on precedent for consistency, clarity and predictability over time. However, San Francisco's guidelines are complex as well, comprising 33 separate Design Guideline documents, which may apply differently based on the location and type of development.

Procedural Controls and Fees

Together, the zoning controls and applicable guidelines establish what can and cannot be built on a site. After this is determined, a development project faces procedural requirements related to the review and approval (or disapproval) and various application and impact fees assessed by the City. Procedural requirements include staff review for compliance with applicable zoning and design guideline requirements, environmental review (as necessitated by the California Environmental Quality Act, CEQA), public notification and required entitlement hearings or requested hearings such as discretionary review initiated by a member of public. Some projects require policy coordination within the Planning Department or across city agencies. Procedural requirements are intended to ensure appropriate administrative and public vetting of projects to determine consistency with the General Plan and to identify, avoid, and/or mitigate specific impacts to the natural environment and people's health and welfare. Some procedures have been adopted to avoid negative impacts on our communities and to address social and racial equity. At the same time, procedures take time to complete, which can indirectly add cost to a project. Various fees imposed on a project by the City, to cover the costs of reviewing and processing applications or to mitigate the impacts created by new development, directly add to the cost of a housing development project as well.

Process

Extensive Public Process + Neighborhood Notification Requirements. Most new housing projects in San Francisco are required to undergo a lengthy public review process, intended to allow public vetting and input on the proposal. Unlike in most other cities (notably New York City), where a zoning compliant

proposal for a new housing project can be approved over the counter, many projects in San Francisco must be taken in by staff for review and to meet neighborhood notification requirements, adding months to the approval process. In certain circumstances, projects must seek approval from the Planning Commission, adding even more time and layers of discretionary review to the approval process.

Discretionary Actions. In most California jurisdictions, development projects that comply with applicable zoning and planning code regulations are typically ministerial, while projects that require zoning changes or exceptions from the code are subject to discretionary processes where planning commissioners or elected officials must approve the project. San Francisco's Charter establishes that every project is discretionary, unless exempted from local discretion by state law. In addition, San Francisco has required discretionary approvals for housing developments of a certain size (Large Project Authorizations) and certain uses or project types (Conditional Use Authorizations). State law further requires that all discretionary projects receive CEQA review-- again, the prevalence of discretion in San Francisco planning review, results in the application of CEQA to a large body of projects that would be ministerial in the rest of the state. Requiring CEQA also opens these projects up to potential lawsuits, often focused on the contents of the CEQA analysis rather than the merits of the project, which can add tremendous cost and uncertainty to a project's approval process and timeline.

Furthermore, San Francisco's Planning Code allows any member of the public to send almost any project to the Planning Commission for approval, via a process known as Discretionary Review (DR). A DR may be requested and sent to the Planning Commission for projects as small as a minor home addition, and projects receiving DRs are often fully compliant with applicable zoning regulations. In any given year, the Department processes roughly 120 requests for DR, resulting in 2 to 3 DR items on each Planning Commission hearing agenda. In addition to adding significant time and uncertainty to an individual project's approval time, DR requests take up hours of every Planning Commission hearing reducing the time available for major policy deliberations.

Post-Entitlement Approvals

After receiving entitlements from the Planning Department, housing projects must receive approvals from a slew of other City agencies, including the Department of Building Inspection, San Francisco Public Works, the Fire Department, and others. Depending on a project's size, complexity and location, these post-entitlement approvals can take months or even years. Lack of coordination between City agencies on these approvals has been cited as a major source of delay for housing projects. In 2018, Mayor London Breed appointed a Director of Housing Delivery to prioritize streamlining, simplifying and standardizing the post-entitlement approvals process.

Fees

As detailed in the Housing Feasibility white paper, new housing projects in San Francisco are subject to a number of fees, which directly add to the cost of a housing project. Fees are often charged on a per-unit or per-square foot basis add, and generally must be related to covering the costs of the impacts new development might have, from sewer capacity to schools to sidewalks and parks. In deciding how much to charge residential projects when setting these fees, the City is deciding how much to directly add to the cost of housing.

Recent Development Regulations and Strategies

In recent years, State and local authorities have begun to alter development regulations to address the acute housing shortage and affordability crisis. In a shift away from longstanding deference toward local control of development, California has taken action both to increase housing capacity and reduce project approval time. In San Francisco, following the issuance of Mayor Lee's Executive Directive 17-02 in 2017, the Planning Department undertook a comprehensive process improvement effort to enhance regulatory and development review functions and streamline the approval of housing projects. This section describes recent changes to development regulations which have been undertaken to increase housing production and improve housing affordability.

State Housing Laws and Local Implementation

The State Density Bonus Program

The California State Density Bonus Law offers development incentives to projects that provide on-site affordable housing. The law also allows for density bonuses in projects providing senior housing, housing for transitional-aged youth, student housing and 100% affordable housing. The Density Bonus Law offers three categories of benefits to incentivize on-site affordable housing; first, a project may seek up to 35% additional residential density; second, a project may receive up to three incentives or concessions (generally, defined as a reduction of development standards, modifications of zoning code requirements, or approval of mixed-use zoning) to offset the costs of providing affordable housing onsite; and third, the City must waive any local development standard required to construct the project with the on-site affordable housing and the incentives or concessions. The amount of the density bonus and the number of incentives or concessions depends on the amount and level of affordability of the affordable units in the project.

The San Francisco Planning Department issued Planning Director Bulletin #6 in 2019, providing developers wishing to utilize the State Density Bonus Law clear guidance of how the law will be interpreted and implemented in San Francisco. As of spring 2020, approximately 60 development projects in San Francisco are seeking to use the Density Bonus Law, including 11 that are using the Density Bonus in conjunction with SB 35 (described below).

SB 35

California Senate Bill 35 (SB-35) was signed by Governor Jerry Brown on September 29, 2017 and became effective January 1, 2018. SB-35 applies in cities that are not meeting their Regional Housing Need Allocation (RHNA) goal for construction of above-moderate income housing and/or housing for households below 80% area median income (AMI). SB-35 requires local municipalities to streamline the approval of certain housing projects by providing a ministerial approval process, removing the requirement for CEQA analysis, and removing the requirement for Conditional Use Authorization or other similar discretionary entitlements granted by a Planning Commission.

In San Francisco, housing projects are eligible for SB-35 if they include at least 50% of units at 80% AMI or below and are consistent with the objective standards of the Planning Code. As mentioned above, projects may also seek a density bonus, incentives and concessions, and waivers through the State Density Bonus Program and remain eligible to use SB 35 in conjunction. The San Francisco Planning Department issued Director's Bulletin #5 on the first day SB 35 became effective, offering guidance on

how the law would be interpreted and implemented in San Francisco. Since SB 35 became effective in 2018, the Department has approved 11 housing projects using the program, including ten 100% affordable projects and two (2) mixed income projects. Two additional 100% affordable housing projects are currently under review and are slated for approval in April 2020.

AB 2162

California Assembly Bill No. 2162 (AB-2162) was signed by Governor Jerry Brown on September 26, 2018 became effective January 1, 2019. AB-2162 applies statewide and requires that supportive housing be a use that is permitted by right in zones where multifamily and mixed-use development is permitted. AB-2162 requires local entities to streamline the approval of housing projects containing a minimum amount of Supportive Housing by providing a ministerial approval process, removing the requirement for CEQA analysis and removing the requirement for Conditional Use Authorization or other similar discretionary entitlements granted by a Planning Commission.

AB 73 - Housing Sustainability Districts

California Assembly Bill No. 73 (AB-73), passed in 2017, gives local jurisdictions incentives to create Housing Sustainability Districts (HSDs) to encourage housing production on infill sites near public transportation. Housing projects with on-site affordable housing that are compliant with applicable general plan and zoning standards are eligible for streamlined approval by the City and must be approved within 120 days of receipt of a complete application. San Francisco created an HSD in conjunction with the Central SoMa Area Planning Process shortly after the State Law became effective and is considering a second HSD as part of the Market and Octavia Area Plan updates.

SB 330

California Senate Bill 330, “The Housing Crisis Act of 2019,” was signed into law by Governor Newsom on October 9, 2019 and became effective January 1, 2020. The bill establishes a statewide housing emergency to be in effect until January 1, 2025. The San Francisco Planning Department issued Director’s Bulletin #7 to provide guidance on the application of the bill to the review and approval processes for housing development projects and zoning actions related to residential uses in San Francisco during the housing emergency period.

Local Programs

Local programs to support affordable housing development include the inclusionary affordable housing, affordable housing density bonus, HOME-SF, ADU, and legalization programs.

Inclusionary Affordable Housing Program

San Francisco’s Inclusionary Affordable Housing Program requires residential projects of 10 or more units to pay an Affordable Housing Fee, or to provide a percentage of units as affordable “on-site” within the project or “off-site” at another location in the city. (Planning Code § 415, 419). The Program has been in effect since 2002 and produced approximately 4,600 permanently affordable homes between 2002 and 2017.

In 2016, San Francisco residents voted to increase the Inclusionary obligations by more than double (from 12% on-site to 25%) and direct the City Controller’s Office study to determine citywide inclusionary rates that would be economically feasible. The study concluded that the rate that voters adopted was

infeasible and recommended that the San Francisco Board of Supervisors (BOS) adopt lower rates. In spring, 2017, the members of the BOS adopted the most substantial changes to the Inclusionary Ordinance since the program was created, including but not limited to different obligations for rental projects and ownership projects, annual increases to on-site rates, tiered income levels for BMR units in large projects, and minimum unit sizes.

The City is required to update the Inclusionary Affordable Housing Program rates every three years - considering changing economic conditions, construction costs and feasibility – to maximize affordable housing production through the program. The next update will take place in 2020.

Affordable Housing Density Bonus Program

Affordable Housing Density Bonus Program, or AHBP, is a local density bonus program specifically for 100% affordable projects. Eligible projects may be granted additional height and exempted from density limits and may seek zoning modifications from a pre-determined list. Projects proceeding under the AHBP will be reviewed against the Affordable Housing Bonus Program Design Guidelines and may also be reviewed and approved administratively. .

HOME-SF

HOME-SF is San Francisco's local density bonus program for mixed-income projects in specific geographic areas and zoning districts. Eligible projects are exempted from density limits, may seek zoning modifications from a pre-determined list, and may be eligible for up to two floors of additional height. HOME-SF projects must provide between 20 and 30 percent of the units as affordable units for low, middle, and moderate-income households. As of Spring 2020, the Department has approved 3 HOME-SF projects with 275 homes (72 affordable) and has received Preliminary Project Assessments for 10 additional HOME-SF projects.

ADU Program

Accessory Dwelling Units (ADUs), also known as secondary units, in-law units or cottages, are units that may be added to both new and existing buildings. In San Francisco, ADUs are eligible for up to five waivers from specific Planning Code requirements including density, rear yard, open space, bicycle parking, and exposure. ADUs may be subject to components of the Rent Ordinance, such as eviction controls, and ADUs which require waivers will likely be subject to Rent Control. There are two ADU programs: the Waiver Program (Planning Code § 207(c)(4)), which describes the local ADU program, or the No-Waiver Program (Planning Code § 207(c)(6)), which codifies State ADU regulation.

Legalization Program

The Legalization Program provides amnesty to units which have been constructed without proper permits (Unauthorized Units) prior to January 1, 2013. It provides waivers for certain Planning Code Requirements including density, rear yard, open space, parking, and exposure. In 2016, the Planning Code was amended to require a Conditional Use Authorization to remove an Unauthorized Unit, which aimed to further incentivize the legalization program.

Implementation and Process Improvements

Mayor's Executive Directive

On September 27, 2017, [Mayor Edwin M. Lee issued Executive Directive 17-02](#), charging all City Departments to work collaboratively toward faster approvals for housing development projects at both the entitlement and post-entitlement permitting stage. It includes approval deadlines for entitlement and permitting of housing development projects to ensure that enough units are approved each year; accountability measures to ensure deadlines are being observed; key process improvements which City departments will detail in forthcoming plans; and staffing and resources measures which will help departments meet the requirements of this Directive.

The Directive charged the Planning Department and Department of Building Inspection with submitting a plan by December 1, 2017 outlining process improvement measures to enhance regulatory and development review functions in order to streamline the approval and construction of housing in San Francisco.

To develop this [process improvements plan](#), staff inventoried proposals generated from past improvement efforts, formed a steering committee of content experts and senior staff from all organizational divisions, and participated in a series of Department-wide, team-level, and one-on-one discussions with the Planning Director and other senior staff. The Plan, completed in late 2017, includes description and implementation of the following types of process improvements:

- A. Application and Intake Procedures
- B. Routine Projects and Permits
- C. Environmental Planning, Historic Preservation, and Design Review
- D. Planning Code and Commission Policies E. Administration, Training, and Technology

Section 315 – Administrative Approval

100% Affordable Projects that are not seeking a density bonus are eligible for administrative approval in lieu of the Planning Commission hearing that would otherwise be required for a Conditional Use Authorization, Large Project Authorization in Downtown, Large Project Authorization or other entitlement. These projects are eligible for the same exceptions as those listed in Planning Code Sections 304, 309, and 329.

Potential Future Opportunities

In addition to the actions already taken, there remain opportunities to evolve local development regulations to increase housing capacity, diversify supply, improve mobility, induce production, and streamline the project approval processes.

Consider Regulations through an Equity Lens

As this white paper's brief history of development in San Francisco illustrates, land use regulations in San Francisco, and broadly across the country, have at times been explicitly designed to perpetuate racism and exclusion. Whatever their intentions, it is clear that the existing system of land use regulation in San Francisco has not resulted in equitable housing outcomes for all San Franciscans.

In order to correct past injustices, and advance racial and social equity, San Francisco should apply an equity lens when considering future changes to regulations concerning the development of housing. Such a lens might include analyzing what groups benefit, are placed at risk, or might be disproportionately impacted by potential changes to land use regulations. San Francisco could prioritize desegregation and expansion of housing opportunities throughout the city using this equity lens. The city could also emphasize community stabilization along with the creation of new housing in land use planning and housing policy in neighborhoods with concentrations of people of color and people with lower incomes. Future changes in land use planning and housing policy making would be informed by input from communities of color and low- and moderate-income people.

Increase Housing Capacity

Area Planning

One of the primary ways San Francisco has increased housing capacity over the past two decades has been through the creation of Area Plans. All of the Area Plans passed by San Francisco since 2000 have involved multi-year, comprehensive planning processes with robust community engagement and input, and generally have changed existing zoning to allow for higher residential densities in areas appropriate for new housing. Area planning typically also includes analysis of the potential impacts of growth allowed under new zoning and can include institution of impact fees to fund infrastructure improvements needed to support future growth. As detailed earlier in this white paper, a large proportion of housing produced in San Francisco since 2000 – both affordable and market rate – has taken place in areas covered by Area Plans. Expanding area planning to parts of the city not covered by existing plans is a key strategy for increasing housing capacity, and planning for future growth needs, citywide.

Expand existing bonus programs to increase housing capacity in low-density neighborhoods

The AHBP allows increased density, height, and other zoning concessions for 100% affordable zoning projects while the HOME-SF program allows density, height, and other zoning concessions for new housing projects that provide more affordable housing on-site than otherwise required by the City's Inclusionary Housing Ordinance. These programs, however, do not apply in the city's lowest density RH-1 and RH-2 zoning districts, which cover about 60% of the city's residentially zoned land. Expansion of the program to these zoning districts could result in more housing – including significantly higher levels of new affordable housing – throughout San Francisco. In 2019, voters approved Proposition E which

allowed for multifamily 100% affordable and educator housing on public land and residentially zoned parcels up to 10,000 square feet, including increased density and expedited review. This proposition could be expanded upon to allow multifamily 100% affordable and educator housing on smaller parcels or combining of parcels to create more sites for multifamily 100% affordable and educator housing.

Shift from unit-based to form-based density controls citywide

The primary reason Area Plans and programs like HOME-SF have resulted in higher housing production is the specific way they regulate residential density. For the most part, new housing production in San Francisco since 2005 has happened in places where the zoning regulates the size and shape of the building (also known as form-based zoning) rather than the number of housing units allowed on a lot (also known as density-controlled zoning districts). One of the primary reasons Area Plan have resulted in relatively high housing production is through the creation of zoning that regulates residential density through building form and a required mix of unit sizes (bedroom mix requirements), generally allowing more housing per parcel than traditional density-restricted zoning districts. While HOME-SF also allows for this type of form-based zoning, it comes with a higher on-site affordable housing requirement, which can affect the feasibility of constructing new housing, particularly in outlying neighborhoods with lower rents and sales prices but similar construction costs. Expanding form-based density controls citywide, without a corresponding raising of on-site inclusionary housings requirements, and possibly without even changing existing height and bulk controls, would greatly increase housing capacity, and likely lead to higher production of both affordable and market-rate homes.

Condition future Institutional growth on housing production as part of Institutional Master Plans (IMPs)

Large institutions in the city (Universities, Hospitals, etc.) are required to file Institutional Master Plans (IMPs) with the Planning Department, describing current and anticipated development of their campuses. A new policy to require IMPs to consider the housing needs generated by institutional expansion, and to accommodate those needs through the creation of new housing (either on-site or near institutional uses covered by the IMP) could ensure that institutional growth does not create an adverse impact on housing affordability in San Francisco.

Streamline and Simplify Project Approval Process

Streamline and simplify the project approval process, potentially targeting projects that provide on-site affordable housing for additional streamlining.

Modernize and simplify the Planning Code^[xiv]

As noted earlier in this white paper, San Francisco's Planning Code has grown significantly, and often confusingly, over the past several decades to around 840,000 words. A long, complicated and often contradictory Planning Code has contributed to a long, complicated, and often contradictory approval process for new housing projects. A comprehensive effort to simplify the Planning Code, identify and remove contradictory sections, and modify sections which hinder the production and preservation of housing, could simplify and streamline the process for approving and constructing new market rate and affordable housing. Many other cities (notably Los Angeles¹³) have undertaken or are undertaking similar efforts in an effort to simplify the development process.

Faster approval for higher affordability (local version of SB 35)

Several recent state and local initiatives have aimed to simplify the development process for projects with higher than typical amounts of affordable housing by allowing for a streamlined approval process. SB 35, described more in the prior section, allows ministerial approval for housing projects with at least half of all units affordable at 80% of AMI or lower, depending on a jurisdiction's progress towards meeting its RHNA goals. Prior to passage of SB 35, San Francisco had implemented Section 315 administrative approval process for 100% affordable housing projects. Section 315 limits discretionary review and removes the need for a Commission hearing, however, it does not create a ministerial process because affordable projects are still subject to CEQA review and are not guaranteed a shortened approval timeline as with SB 35.

Moving forward, the City could prioritize developments that provide higher affordability levels for ministerial approval. For example, 100% affordable projects and projects providing more on-site affordable units than otherwise required by the Inclusionary Ordinance, such as HOME-SF projects, might be good candidates for this ministerial process. As of Spring 2020, Mayor London Breed has announced a charter amendment which would create a ministerial approval process for projects in San Francisco that meet one of various criteria: 100% affordable housing (up to 140% AMI); housing developments of 25 or more units that provide on-site inclusionary units plus 15% more on-site affordable units than the required number of inclusionary units; housing developments of less than 25 units that provide on-site affordable housing that is greater than the number of on-site inclusionary affordable units required.

Reform Discretionary Review

Discretionary review (DR) creates a lack of certainty in the project review and approval process, since a project's success depends not only on compliance with the Planning Code, Design Guidelines, and other applicable City rules but can also vary based on who or what happens to be near the project site and has the time and resources to challenge it. The threat of DR can be a barrier for housing development since DR extends the review and approval process and creates uncertainty, thereby increasing the cost and risk of housing development. Some affected projects include affordable housing on-site, delaying or stopping delivery of affordable units. In addition, addressing discretionary review cases requires Planning Commission time and Planning Department staff time and resources. By reforming discretionary review, needed housing development could proceed with greater certainty and Commission and staff time and resources could be dedicated to a variety of other tasks, policies, and programs to advance equity and improve housing affordability.

References

Brown, Mary. City and County of San Francisco, Planning Department. "Sunset District Residential Builders, 1925-1950: Historic Context Statement." 2013.

City and County of San Francisco, Planning Department. "An Architectural Guide to Remodeling and Restoration in the Inner Richmond District." 1977.

City and County of San Francisco, Planning Department. "A History of Low-Density Residential Districts in San Francisco."

City and County of San Francisco, Planning Department. "San Francisco Preservation Bulletin No. 18: Residential and Commercial Architectural Styles in San Francisco." 2003.

Glaeser, Edward L. and Bryce A. Ward. "The causes and consequences of land use regulation: Evidence from Greater Boston." *Journal of Urban Economics*, 2009.

Mandelker, Daniel R., et al. *Planning and Control of Land Development: Cases and Materials, 8th Edition*. Lexis Nexis, 2011.

McCutcheon, Devin. City and County of San Francisco, Planning Department. "Timeline of San Francisco Planning History." Draft, 2017.

Passmore, Robert. City and County of San Francisco, Planning Department. "An Abbreviated and Unofficial Timeline of Planning and Zoning in San Francisco." 2017.

Rothstein, Richard. *The Color of Law: A Forgotten History of How Our Government Segregated America*. Liveright, 2017.

United States Department of the Interior, National Park Service. "National Register of Historic Places Registration Form: Uptown Tenderloin Historic District." Prepared by Michael R. Corbett and Anne Bloomfield, 2008.

Endnotes

- 1 Yang, J. S., (2009). "The Anti-Chinese Cubic Air Ordinance, American Journal of Public Health." American Journal of Public Health. Online: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2661442/>.
- 2 "The Strange Case of the Chinese Laundry" webisode. THIRTEEN. Online: https://www.thirteen.org/wnet/historyofus/web08/segment6_p.html
- 3 Mandelker, Daniel R., et al. Planning and Control of Land Development: Cases and Materials, 8th Edition. Lexis Nexis, 2011., pages 11-13.
- 4 Brown, Mary. City and County of San Francisco, Planning Department. "San Francisco Modern Architecture and Landscape Design, 1935-1970: Historic Context Statement." 2011. Page 21.
- 5 On Department reorganization, see: "City Planning Commission Mark Jorgensen Quits Secretary Post in Protest," San Francisco Chronicle, January 20, 1943.
- 6 San Francisco City Planning Commission and San Francisco Department of City Planning, The Master Plan of the City and County of San Francisco, (N.D.): Introduction [Planning Department Library: A 1d].
- 7 San Francisco City Planning Commission, The Master Plan of the City and County of San Francisco—A brief summary of the Master Plan as adopted by the City Planning Commission on December 20, 1945, with an outline of the task ahead., (San Francisco, CA: January 1946), 14.
- 8 "Supervisor Acts to Block Motel Plan - Supervisor Arnold Acts To Block Motel Plan," San Francisco Chronicle, February 16, 1954. "Building Permit Appeal: Protest Heard Over motel Near Hospital," San Francisco Chronicle, March 11, 1954.
- 9 City Planning Commission, "Meeting Minutes," [Planning Department Electronic Files]: I:\Director's Office\History of SF Planning\Planning History Library\Historical Documents of Planning History\1954-05 - Planning Commission Meeting Minutes - Requesting City Attorney Opinion and then Applying Discretionary Review.pdf (accessed August 4, 2016).
- 10 Dion R. Holm, City Attorney, to Department of City Planning, "Opinion No. 845: Powers of City Planning Commission in re Building Permit Application; Application to Construct Hotel Opposite Shriners' Hospital After Denial of Motel Application," (May 26, 1954), [Planning Department Electronic Files]: I:\Director's Office\History of SF Planning\Planning History Library\Historical Documents of Planning History\1954-05-26 - City Attorney Opinion No. 845 - Discretionary Review.pdf (accessed August 4, 2016).
- 11 2018 American Community Survey.
- 12 San Francisco City & County Charter Section 4.105. [http://library.amlegal.com/nxt/gateway.dll/California/charter_sf/articleivexecutivebranch-boardscommissio?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$anc=JD_4.105](http://library.amlegal.com/nxt/gateway.dll/California/charter_sf/articleivexecutivebranch-boardscommissio?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_4.105)
- 13 <https://recode.la/about>