

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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October 29, 2021

William Seligmann, City Attorney
City of Campbell
70 North First Street
Campbell, CA 95008

Dear William Seligmann:

RE: Franciscan Apartments – Letter of Technical Assistance

The purpose of this letter is to provide technical assistance to the City of Campbell (City) regarding a residential infill project at the existing Franciscan Apartments located at 601 Almarida Drive. The proposed project would add 60 units to the existing apartment complex and includes a request for density bonus. The City requested technical assistance from the California Department of Housing and Community Development (HCD) on the question of whether the replacement provisions of the State Density Bonus Law (SDBL) (Gov. Code, § 65915, subd. (c)(3)) would apply in the context of the project. In short, the City asserts that the replacement provisions would apply; HCD disagrees with this interpretation, as outlined below.

HCD's technical assistance is based on the following understanding of the proposed project. The proposed project would result in the addition of 60 new multifamily residential units to an existing site currently developed with 180 multifamily units, for a total of 240 units. The project would be made possible by a 35 percent density bonus pursuant to the SDBL. The new units would be added to the site by constructing a new three-story freestanding building on a portion of the site that is currently occupied by surface parking and an amenity building. None of the existing 180 multifamily units would be demolished, converted to condominiums, or converted to nonresidential use as a result of project activities. None of the existing units are currently subject to a deed-restriction that would limit rents to levels affordable to low-income households, nor are any of the units subject to a rent control ordinance.

HCD's Understanding of the City's Interpretation

In a letter to HCD, the City requested that HCD opine on whether the replacement provisions of the SDBL would apply in the context of the project. (Gov. Code, § 65915, subd. (c)(3).) As HCD understands it, the City interprets that all existing housing units that are occupied by lower-income households must be "replaced" by "preserving" them via deed-restriction to affordable units. The letter does not specify exactly how many existing market rate units would need to be "preserved" in this way. In the absence of evidence from the developer to the contrary, the City would apply the

rebuttable presumptions in the statute regarding the number of units occupied by lower income households (Gov. Code, § 65915, subd. (c)(3)(B)), which would be roughly 82 units (46 percent of 180 units). The 46 percent figure is based on data from HUD's Comprehensive Housing Affordability Strategy Database, provided to HCD by the City. Thus, to build 60 new units at this site, the City asserts that the applicant would have to restrict 82 "replacement" units in addition to the units proposed by the project to satisfy SDBL bonus and the local inclusionary ordinance requirements. HCD disagrees.

Applicability of SDBL Replacement Provisions to Franciscan Apartments Project

HCD finds that the replacement provisions of SDBL (Gov. Code, § 65915, subd. (c)(3).) would not apply to this project. None of the existing 180 multifamily residential units would be demolished, converted to condominiums, or converted to nonresidential use as a result of project activities. It appears that the City is concerned that existing families may be displaced at some time in the future, perhaps through gentrification. HCD does not consider that the replacement provisions of the SDBL contained in subdivision (c)(3) were intended to address activities on or off the site that may result in long-term displacement. HCD is not aware of any evidence of the risk of future displacement, and this projection by the City appears to be speculative. While it may be laudable to preserve any existing market rate units on-site that are occupied by lower-income households via conversion to deed-restricted affordable housing, it cannot be *required* in this instance pursuant to SDBL.

HCD finds support for its interpretation in at least three considerations. First, the statute uses the term "replace" and "replacement," suggesting that a unit currently or previously subject to affordable restrictions or actually occupied by persons with lower-income is being demolished or removed from affordability due to conversion into a condominium or other nonresidential use. That is consistent with the ordinary meaning of the term.¹ The term suggests that units will be removed physically or legally from use in the manner to which they had been put. It seems unlikely that the Legislature would use the term replace in this manner if it merely meant that units that would be unchanged would still have to be "replaced" in the accounting of affordable units provided by the project.

Second, the Legislative history does not support the City's interpretation. In amending Government Code section 65915 in 2014 to include subdivision (c)(3), the author's stated intent was to replace units that were actually demolished:

According to the author, "Adequate and affordable housing is an issue of statewide concern. Yet, the change made to the density bonus law by SB 1818

¹ For instance, the term "replace" means "to put back in a previous place or position," "to take or fill the place of," and "to return or pay back." (Webster's II New College Dictionary, Houghton Mifflin, Boston, 1995, at p. 940; see also Merriam-Webster.com at < <https://www.merriam-webster.com/dictionary/replace> > ["restore to a former place or position"; "to take the place of especially as a substitute or successor"; or "to put something new in the place of"].) "Replacement" is similar and means the act or process of replacing or being replaced," "substitution," and "one that replaces." (Webster's II New College Dictionary, Houghton Mifflin, Boston, 1995, at p. 940.)

had the reverse effect and has resulted in fewer affordable units.... buildings that were built pre-SB 1818 that are proposed to be demolished and replaced may now qualify for a density bonus under the new SB 1818 structure.

SB 1818 inadvertently created a loophole whereby developers that propose to demolish pre-SB 1818 buildings are not required to begin the new project with the same number of affordable units. As a result, a new project may result in less affordable units than previously existed on the parcel.

This bill addresses the loophole created by SB 1818 and ensures that affordable units are preserved when a development proposes to demolish a site and the new proposal is to replace the outdated structure with a new residential structure by ensuring that the project begins with the same number of affordable units. Additionally, this bill increases the classification of affordability from 30 years to 55 years. This change is consistent with other state and local programs and ensures that affordable units remain affordable. AB 2222 will preserve and promote the supply of affordable units for years to come.”

(Assem. Comm. on Local Gov., Analysis of AB 2222 (Reg. Sess. 2013-2014), as amended May 5, 2014, p. 4.) Other statements in the legislative history are similar.

Finally, in providing technical assistance, HCD foremost remains mindful of the interpretive provisions in directives of the Legislature: “This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.” (Gov. Code, § 65915, subd. (r).) While the City’s interpretation may increase the overall level of affordable units at this particular site, the City’s interpretation would have the overall effect of chilling infill and densification projects at existing multifamily sites as it would penalize them by making them provide greater levels of affordability as compared to their greenfield competitors, even when there is no clear or demonstrable evidence that existing units would be affected in any way. In this way, such an interpretation would serve to chill housing development across the state and chill reliance on SDBL for infill development projects.

HCD respects the challenges inherent in infill development and applauds the creation of additional market-rate and affordable housing (especially on a site where none exists currently). If you have questions or need additional information, please contact Brian Heaton at Brian.Heaton@hcd.ca.gov.

Sincerely,



Shannan West
Housing Accountability Unit Chief