

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

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June 24, 2025

Amanda Mills, Director of Housing and Homeless Services  
City of Carlsbad  
1635 Faraday Ave.  
Carlsbad, CA 92008

Dear Amanda Mills:

**RE: City of Carlsbad – Housing Crisis Act, Accessory Dwelling Unit Replacement Units – Letter of Technical Assistance**

The California Department of Housing and Community Development (HCD) received a request for technical assistance regarding the application of the Housing Crisis Act (HCA) of 2019<sup>1</sup> to a project located at 3408 Madison St./735 Chestnut Ave. The purpose of this letter is to provide technical assistance (TA) to the City of Carlsbad (City) to clarify that an accessory dwelling unit (ADU) cannot be used as a replacement unit since the project is a for-sale development proposal. This letter also further expands upon previous TA letters HCD issued on the topic of replacement units to the City of San Jose in 2024 to provide guidance on the interaction between ADU Law and the replacement requirement in the HCA.<sup>2</sup>

**Background**

HCD understands that the City has received a development application for a residential project that proposes demolishing a unit occupied by a lower-income household. Because the unit proposed to be demolished is occupied by a lower-income household, the unit meets the definition of a “protected” unit<sup>3</sup> and must be replaced by the applicant pursuant to the HCA.<sup>4</sup> HCD understands that the proposed development will construct nine new units across three parcels. Each parcel would be developed with a residential structure containing three units: a primary single-family unit, an attached ADU, and an attached junior accessory dwelling unit (JADU). HCD additionally understands that the

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<sup>1</sup> Gov. Code, § 66300 et. seq.

<sup>2</sup> HCD, Letter of Technical Assistance Regarding ADU Replacement Units for the City of San Jose, October 16, 2024, available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/sanjose-hau-1053-ta-10162024.pdf>

<sup>3</sup> Gov. Code § 66300.5, subd. (h)(3).

<sup>4</sup> Gov. Code § 66300.6, subd. (b)(1)(A).

proposed development is a for-sale project, the proposed single-family homes would be sold to private individual owners, and that the applicant does not intend on holding the units for rent.

## Analysis

The City submitted the following question to HCD:

**Can the project designate one of the ADUs as a rental, deed-restricted, low-income unit with a 55-year affordability covenant to satisfy the replacement requirement for protected units pursuant to the HCA and State Density Bonus Law (SDBL)?**

In summary, the answer is “no.” As explained in a previous TA letter provided to the City of San Jose by HCD,<sup>5</sup> replacement units must be for sale if the proposed development is a for-sale development. The HCA refers to the SDBL<sup>6</sup> to define how demolished protected units are to be replaced. The SDBL provides that if the proposed project consists of for-sale units, the units replaced shall also be provided as for-sale units.<sup>7</sup>

Additionally, an ADU cannot be used as a for-sale replacement unit since the City of Carlsbad has not adopted an ordinance pursuant to Government Code section 66342 to facilitate the separate sale or conveyance of an ADU to individual buyers.<sup>8</sup>

Finally, JADUs also cannot be used as a for-sale replacement unit, since ADU Law prohibits the conveyance of JADUs separate from the primary unit.<sup>9</sup> As explained in another TA letter from HCD to the City of San Jose, HCD does not recommend that JADUs be used as replacement units for the purpose of the HCA, even if the proposed development did not consist of for-sale units.<sup>10</sup>

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<sup>5</sup> HCD, Letter of Technical Assistance Regarding ADU Replacement Units for the City of San Jose, October 16, 2024, available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/sanjose-hau-1053-ta-10162024.pdf>

<sup>6</sup> Gov. Code, § 66300.5, subd. (i)(1).

<sup>7</sup> Gov. Code, § 65915, subd. (c)(3)(B)(ii)-(C)(i) (See final sentences).

<sup>8</sup> See HCD, Letter of Technical Assistance Regarding ADU Replacement Units for the City of San Jose, October 16, 2024, pg. 3.

<sup>9</sup> Gov. Code, § 66333, subd. (c)(1).

<sup>10</sup> HCD, Letter of Technical Assistance Regarding ADU Replacement Units for the City of San Jose, December 11, 2024, page 2, available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/sanjose-hau1347-ta-jadu-replacement-12112024.pdf>

### **Determining the tenure of the proposed development**

As previously discussed, the HCA's replacement requirement changes depending on whether the proposed development is for-sale units. There is no limitation on the tenure status (for-sale or rental) of replacement units for a development of rental units. However, the SDBL provides that if the proposed development is for-sale, the units replaced shall also be provided as for-sale units. Government Code section 65915, subdivisions (c)(3)(B)(i) and (ii) state:

“If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2) [of subdivision (c)].

Subdivision (c), paragraph (2)(A) states:

“An applicant shall agree to ensure ... that a for-sale unit ... meets one of the following requirements:

- (i) The unit is initially sold to and occupied by a person or family of very low, low, or moderate income, as required, and it is offered at an affordable housing cost ... and is subject to an equity sharing agreement.
- (ii) If the unit is not purchase by an income-qualified person or family within 180 days after the issuance of the certificate of occupancy, the unit is purchased by a qualified nonprofit housing corporation ....”

HCD recognizes the nuance in determining whether a project consists of for-sale units for the purpose of the replacement requirement in the HCA and the SDBL. There is no single methodology generally available to determine whether a project is a for-sale development for the purpose of the HCA replacement requirement. However, a project does not need to have every unit be separately conveyed for the project to be a for-sale development. In the case of the subject proposed development, three lots – each with a primary unit, ADU, and JADU – are planned to be developed and sold to individual private property owners.

HCD understands that the City considers the proposed project located at 3408 Madison St./735 Chestnut Ave a for-sale project. Submitted documents also support this conclusion. A site plan shared with HCD depicts the three parcels intended to be conveyed to three individual private owners as indicated by landscape maintenance and responsibility areas designated for each parcel's property owner. Given the City's understanding of the proposed development and application materials for the proposed development located at 3408 Madison St./735 Chestnut Ave, HCD concurs with the City that the proposed development is a for-sale project. Because the proposed development is a for-sale project, the replacement unit must be offered at an affordable sale price pursuant to Government Code section 65915, subdivision (c)(2).

## Conclusion

As discussed above, the replacement unit must not be a JADU or ADU, as the City does not have a separate conveyance ordinance for ADUs. Additionally, JADUs cannot be separately conveyed. Finally, HCD understands that the protected unit proposed to be demolished is a single-family home. Because of this, the replacement unit must meet the definition of “comparable unit” pursuant to Government Code section 66300.6, subdivision (b)(4)(C).

HCD reminds the City of its obligations to uphold the replacement requirement for protected units in the HCA. HCD remains committed to supporting the City in facilitating housing at all income levels and hopes the City finds this clarification helpful. If you have questions or need additional information, please contact Brandon Yung at [brandon.yung@hcd.ca.gov](mailto:brandon.yung@hcd.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal stroke extending to the right.

David Zisser  
Assistant Deputy Director  
Local Government Relations and Accountability