

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

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September 25, 2025

Omar Dadabhoy, Community Development Director
City of Fountain Valley
10200 Slater Avenue
Fountain Valley, CA 92708

Dear Omar Dadabhoy:

RE: City of Fountain Valley, Euclid & Heil project – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received an inquiry regarding the proposed housing development project at the northeast corner of Euclid Street and Heil Avenue (Project) in the City of Fountain Valley (City). This letter provides technical assistance to the City regarding rent limits for the affordable housing units proposed as part of the Project.

Project Background

HCD understands that the Project would consist of 304 market-rate rental apartments, 83 senior rental apartments (82 affordable lower-income units and 1 manager unit), 183 market-rate for-sale townhomes, and 36 market-rate for-sale triplexes totaling 606 units on an 18.09-acre lot. The property would be subdivided into three separate parcels through a parcel map, resulting in a 3.31-acre lot for the market-rate apartments, a 0.78-acre lot for the senior affordable apartments, and a 14-acre lot for the townhomes and triplexes.

The Project's base density under the State Density Bonus Law (SDBL)¹ allows for 592 base units. The 82 affordable units constitute 15 percent of those base units, which meets the City's inclusionary housing requirement.² The 82 affordable units also entitle the project to a density bonus of up to 27.5 percent, although the Project is requesting a bonus of only 11.7 percent, or 64 units, for a total of 606 units.

HCD understands that the 83-unit senior affordable apartment building would be owned and operated by a nonprofit affordable housing developer who intends to apply for low-income housing tax credits to help finance the building.

¹ Gov. Code, §§ 65915 – 65918.

² Fountain Valley Municipal Code, § 21.17.040, subd. (a).

Question 1: Can the 83-unit senior affordable apartment building use the rent limits prescribed by deed restrictions or regulatory agreements pursuant to a public financing award if it is providing the affordable units required under the SDBL?

Yes, if the 83-unit senior affordable apartment building receives an award of certain types of public assistance, including federal or state low-income housing tax credits, on or after January 1, 2025, the building may use the rent limits prescribed by the deed restrictions or regulatory agreements pursuant to that public financing award.

The SDBL states, “rents for the lower income density bonus units shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.”³

Health and Safety Code section 50053 establishes two scenarios for determining the “affordable rent.” Subdivision (b)(1) defines default rent limits for households at different income levels. For example, for lower-income households whose gross incomes exceed the maximum income for very low-income households, rent generally shall not exceed the product of 30 percent times 60 percent of the area median income adjusted for family size appropriate for the unit.⁴

Recent amendments⁵ added subdivision (b)(2), which establishes that where a “rental housing development” dedicates at least 80 percent of the units to lower-income households, the rent “shall not exceed the rent prescribed by deed restrictions or regulatory agreements pursuant to the terms of the public financing or public financial assistance” that the development received. Such assistance includes “[f]ederal or state low-income housing tax credits.”⁶

The question then becomes: Should the eligibility criterion “dedicates at least 80 percent of the units to lower-income households” apply to the 83-unit senior affordable apartment building or to the entire 606-unit Project?

Section 50053, subdivision (b)(2) specifically applies to a rental housing development that receives an award of public financing. Applying the 80 percent criterion to the entire project would be nonsensical, as the types of funding referenced in subdivision (b)(2) are only provided to specific individual buildings or housing development projects, not to broader projects that include multiple types of housing or other uses or are developed by multiple entities or in different phases. It is the 83-unit senior affordable apartment building, not the entire 606-unit project, that is applying for low-income housing tax credits. Therefore, the eligibility criterion applies to the 83-unit senior affordable

³ Gov. Code, § 65915, subd. (c)(1)(B).

⁴ HSC, § 50053, subd. (b)(1)(D).

⁵ Stats. 2024, Ch. 674, Sec. 2. (AB 846).

⁶ HSC, § 50053, subd. (b)(2)(A).

apartment building. That building dedicates 99 percent of the units (82 out of 83) to lower-income households, which exceeds the 80-percent threshold for subdivision (b)(2). Therefore, the building may use the rent limits in subdivision (b)(2).

Legislative intent supports this interpretation. A legislative analysis of the bill that added subdivision (b)(2) notes that multiple rent limits “can cause confusion because different affordable housing programs or policies cite one limit or the other. This becomes a problem when an individual development utilizes multiple funding sources or land use tools and both limits apply, causing unnecessary confusion and compliance challenges. Recent amendments to the bill resolve this conflict by deferring to the income and rent limits of the public funding or financing program.”⁷ Clearly, the legislature’s intent was that affordable housing developments like the 83-unit senior affordable apartment building be eligible for subdivision (b)(2).

Question 2: Can the 83-unit senior affordable apartment building use the income averaging rules allowed by the federal Internal Revenue Code and California Tax Credit Allocation Committee regulations?

Yes, if the 83-unit senior affordable apartment building receives an award of federal or state low-income housing tax credits on or after January 1, 2025, the building may use the income averaging rules allowed by the federal Internal Revenue Code and California Tax Credit Allocation Committee regulations if the regulatory agreements or the terms of the applicable financial assistance allow income averaging.

As noted above, rental housing developments that are eligible for Health and Safety Code section 50053, subdivision (b)(2) may charge rent that “shall not exceed the rent prescribed by deed restrictions or regulatory agreements pursuant to the terms of the public financing or public financial assistance” that the development received. Therefore, if the 83-unit senior affordable apartment building receives tax credits whose regulatory agreements or regulations allow income averaging, the building may use those income averaging rules.

Conclusion

In summary, if the 83-unit senior affordable apartment building receives an award of certain types of public assistance, including federal or state low-income housing tax credits, on or after January 1, 2025, the building may use the rent limits in Health and Safety Code section 50053, subdivision (b)(2), including any applicable income averaging rules.

⁷ August 30, 2024 Assembly Floor Analysis, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240AB846.

HCD has enforcement authority over the SDBL, among other state housing laws. Accordingly, HCD may review local government actions to determine consistency with these laws. If HCD finds that a jurisdiction is in violation of state law, HCD may notify the California Office of the Attorney General.⁸

HCD requests a written response from the City by October 24, 2025, indicating how the City plans to implement the guidance provided in this letter. If you have any questions regarding this letter or require additional technical assistance, please contact Stephanie Reyes at stephanie.reyes@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a stylized flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

⁸ Gov. Code, § 65585, subds. (i) and (j).