STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY GAVIN NEWSOM, *Governor*
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
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January 28, 2025

Leigha Schmidt, Principal Planner
City of Hayward
777 B Street
Hayward, CA 94541

Dear Leigha Schmidt:

RE: City of Hayward, Senate Bills 684 and 1123 – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received a request for technical assistance from City of Hayward (City) staff pertaining to the implementation of Government Code sections 66499.41 and 65852.28.

Background

Codified by Senate Bill (SB) 684 (Chapter 783, Statutes of 2023) and to be amended by SB 1123 (Chapter 294, Statutes of 2024), Government Code sections 65852.28, 65913.4.5, and 66499.41 create a streamlined ministerial approval process for development projects of ten or fewer residential units on urban lots under five acres located on sites that allow for multi-family residential uses. The statutes require the local agency to ministerially consider, without discretionary review or hearings, a parcel map and housing development project that meet specific requirements.

Analysis

While HCD was processing the City of Hayward's three technical assistance questions, another jurisdiction asked a technical assistance question regarding the same topic. HCD's responses to each technical assistance question are provided below.

Question 1: Is the intent that this law would apply to any zoning district where multifamily residential uses are permitted such as high intensity mixed-use zones and not just medium and high-density residential zones?

Yes, as long as the parcel is zoned to allow multifamily developments, the statute would apply. Government Code section 66499.41, subdivision (a)(2), specifies that one of the requirements for the lot proposed to be subdivided is that "[t]he lot is zoned for multifamily residential development." The language "zoned for" means any zone that allows for multifamily residential development as a principally or conditionally permitted

land use. The development does not have to be in a zone exclusively designated as a multifamily zone such as a medium or high-density residential zone.

Additionally, on September 19, 2024, SB 1123 was signed into law, further expanding and clarifying the requirements in Government Code section 66499.41. The bill goes into effect on July 1, 2025, so the requirements in this bill are not applicable yet. However, this new bill amends Government Code section 66499.41, subdivision (a)(2), to state that a lot "zoned to allow multifamily residential dwelling use" meets the requirements of the statute. This change, while not in statute yet, reinforces the legislature's intent that this requirement be read broadly, as explained above. In addition, SB 1123 expands Government Code section 66499.41, subdivision (a)(2), beyond zones that allow for multifamily residential development to include lots that are "vacant and zoned for single-family residential development."

Question 2: If Government Code section 66499.41 is intended to apply to mixed-use zones which allow for multifamily development above commercial uses, does this law cover condominium maps for multifamily ownership units (i.e., one building that contains 10 residential units)? It is not clear that this type of subdivision is included.

Yes, one of the options for the housing units on lots proposed to be subdivided is described in Government Code section 66499.41, subdivision (a)(4)(B), as "part of a common interest development." The statute does not specifically define common interest development. However, one of the definitions for a "common interest development" in California Civil Code section 4100 is "a condominium project."[1] As long as the housing development project meets all the other criteria described in the statute, condominium maps for multifamily ownership are included.

Question 3: If the developer wants to rent some or all of the condos in a property after they build, is that allowed?

As outlined clearly in Section 1 of SB 684, the statute is intended to increase homeownership opportunities for Californians. For example, Section 1(m) states, "Home ownership is a powerful tool to close the racial and ethnic wealth gap across the state of California and nationwide." Moreover, Government Code section 66499.41, subdivision (a)(4), outlines four ownership structures that the housing units developed under the statute must fall into: units constructed on fee simple ownership lots, units that are part of a common interest development, units that are part of a housing cooperative, and units that are owned by a community land trust. The possibility that the units could be used as rentals is mentioned only in the definition of community land trust in section 66499.41, subdivision (a)(4)(D). However, once the lots are subdivided and sold according to the four allowed ownership structures, nothing in the statute prevents the individual owner from renting their unit. This includes condominiums in a common interest development.

[1] CCR, § 4100, subd. (b).

Question 4: Is Government Code section 65852.28 only intended to apply to projects consisting of new construction, or could it apply to an existing development seeking a subdivision or condo conversion?

The statute does not explicitly address this issue. However, SB 1123 provides that "[t]he proposed subdivision will not result in any existing dwelling unit being alienable separate from the title to any other existing dwelling unit on the lot."[2] This addition specifies that when subdividing, existing units on the site must be on one lot and not separated. Thus, subdivisions under the statute are intended to be used for new construction and not conversions. Although this language will not go into effect until July 1, 2025, HCD advises that when developing guidance for implementation of the statute, the City do so with this upcoming update in mind.

If you have questions or need additional information, please contact Bentley Regehr at Bentley.Regehr@hcd.ca.gov.

Sincerely,

Shannan West
Housing Accountability Unit Chieft

[2] Gov. Code, § 66499.41, subd. (a)(13).