

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

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August 12, 2022

Adam Pirrie, City Manager
City of Claremont
207 Harvard Ave
Claremont, CA 91711

Dear Adam Pirrie:

**RE: City of Claremont Denial of 731 Harrison Ave Housing Project and
Applicability of the Housing Accountability Act – Notice of Violation**

The California Department of Housing and Community Development (HCD) has reviewed the City Council's denial of the easement for the 731 Harrison Ave Housing Project (Project) on June 28, 2022. In denying the easement, the City of Claremont (City) has violated the Housing Accountability Act (HAA) under Government Code section 65589.5, as detailed in this letter.

HCD requests that the City provide a written response to these findings no later than September 12, 2022. HCD will review and consider the City's written response, if any, before taking any action authorized by Government Code section 65585, subdivision (j), including referral to the California Office of the Attorney General.

Background

On January 26, 2022, the Architectural Commission approved the proposed design, consisting of a four-story 33-unit permanent supportive housing development and found that the Project complied with existing Institutional Residential (IR) zoning where supportive housing is permitted by-right. Consistent with City staff's recommendation, the Architectural Commission imposed a condition on the Project requiring the developer to obtain an access easement to ensure adequate emergency vehicle access and approved the Project. Obtaining this access easement appears to be required for the issuance of a building permit.

On June 23, 2022, HCD sent a letter to the City stating that denying the easement equates to the disapproval of the Project and, without making the required public health and safety findings, would constitute a violation of the HAA under Government Code section 65589.5, subdivision (d)(2). On June 28, 2022, the City Council held a public hearing on the easement and maintenance agreement for vehicular access across the City-owned parking lot located on a portion of the Larkin Park southeast parking lot, heard testimony, and voted 3-2 to deny the easement. The City Council denied the easement despite City staff's recommendation to approve the easement and HCD's

technical assistance informing the City that the Project qualifies for protection under Government Code section 65589.5, subdivision (d).

Denial of the Easement Violates the HAA

As mentioned in the Letter of Support and Technical Assistance sent to the City on June 23, 2022, because the easement was imposed as a condition of approval for the Project, the denial of the easement equates to the disapproval of the Project. As defined in the HAA, the “disapproval” of a housing development project includes not only an outright disapproval of that project, but also includes “any required land use approvals or entitlements necessary for the issuance of a building permit.” (Gov. Code, § 65589.5, subd. (h)(6)(A).) In addition, conditioning approval in a manner that renders the housing development project infeasible is a violation of the HAA in the same way as an action to deny the project; such an action is subject to the same above-noted public health and safety findings pursuant to Government Code section 65589.5, subdivision (d)(2).

The Letter of Support and Technical Assistance also mentioned that denying the Project without making the required public health and safety findings would constitute a violation of the HAA. The City did not make the required specific public health and safety findings under Government Code section 65589.5, subdivision (d)(2), when it denied the easement on June 28, 2022. In failing to make appropriate findings under subdivision (d)(2), the City violated the HAA.

Conclusion

Therefore, based upon the statute, HCD finds that by improperly denying the easement, the City is in violation of Government Code section 65589.5. The City must provide a written response to this finding by September 12, 2022. After that date, HCD may move forward with any of the actions authorized by Government Code section 65585, subdivision (j), including, but not limited to, referral to the California Office of the Attorney General.

In its response, the City’s should include, at a minimum, a specific plan and timeline for corrective action that allows the Project (via the approval of the required easement) to move forward with its plans without further delay or demonstrate that legally sufficient health and safety findings were made pursuant to Government Code section 65589.5, subdivision (d)(2).

If you have questions or would like to discuss the content of this letter, please contact Fidel Herrera of our staff at fidel.herrera@hcd.ca.gov.

Sincerely,



David Zisser
Assistant Deputy Director
Local Government Relations and Accountability