

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

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October 18, 2024

Jane Choi, Principal City Planner
City of Los Angeles
200 N. Spring Street
Los Angeles, CA 90012

Dear Jane Choi:

RE: City of Los Angeles – 2115-2125 East Cesar Chavez Avenue – Letter of Support and Technical Assistance

The California Department of Housing and Community Development (HCD) received a request for technical assistance regarding a 50-unit project (Project) to be located at 2115-2125 East Cesar Chavez Avenue in the Boyle Heights neighborhood of Los Angeles. HCD understands that the East Los Angeles Area Planning Commission (Commission) denied the Project on appeal and the City drafted findings of denial under the Housing Accountability Act (HAA).¹ The purpose of this letter is to provide technical assistance regarding the requirements for findings of denial as described in the HAA, to encourage the City to continue to implement policies and programs to mitigate gentrification and displacement in the Boyle Heights neighborhood, and to urge the Commission to reconsider and approve the Project.

Background

HCD staff met with the City of Los Angeles (City) on July 3, 2024, and with the Project applicant on July 10, 2024. Based on these meetings and relevant City documents, HCD understands the following.

The Project, submitted by Tiao Properties, proposes to demolish an already developed mixed-use site containing three housing units on two contiguous lots.² Currently, there are six commercial tenants and three residential tenants onsite. The Project will be located in the Boyle Heights Community Plan area and is in a Tier 3 Transit Oriented Community (TOC) area. The three units onsite are Rent Stabilization Ordinance (RSO)

¹ Gov. Code, § 65589.5, subd. (j).

² Adelante Eastside Redevelopment Plan Project Compliance Review, City of Los Angeles, August 31, 2024, available at <https://planning.lacity.gov/pdiscaseinfo/document/ODQ1OQ0/fe3b456d-e5a5-4f0e-9fa7-879f1ff43502/pdd>. Case No. DIR-2021-8626-RDP-HCA.

units.³ As required by the Housing Crisis Act (HCA),⁴ the applicant is proposing to replace the three RSO units. In addition to the three replacement units required under the HCA, the applicant is proposing to provide two more deed-restricted units. The applicant has chosen to exceed the minimum replacement requirements of the HCA in order to qualify for TOC Tier 3 base incentives, which includes Floor Area Ratio (FAR) and density increases. According to the TOC Guidelines, the applicant is required to provide a minimum of 10 percent extremely low-income (ELI) units in the TOC Tier 3 area.⁵ Because it is a 50-unit project, the applicant is required to provide 5 ELI units. In sum, the new development would create 4,030 square feet of commercial area, 45 market-rate units, and 5 ELI units.

Timeline

On August 31, 2023, City planning staff determined that “per Section 503.6 of the Redevelopment Plan, the design and location of the project meets the goals of the Plan. The project [proposal] complies with the requirements of the Zoning Code and is not seeking any deviations or relief from the Zoning Code.”⁶ On September 15, 2023, Viva Padilla, in conjunction with RE/Arte Centro, filed an appeal to overturn the Director’s approval on the basis that the Project was not compliant with the Boyle Heights Community Plan Update. Included in Exhibit A of the “Appeal Recommendation Report” from the Commission, the appeal cited several concerns regarding the proposal’s failure to plan for displaced residents and legacy businesses, and a failure to protect cultural institutions and LGBTQIA+ owned businesses.⁷ However, the “Appeal Recommendation Report” stated that many of the issues raised in the appeal “are extracted from the proposed Boyle Heights Community Plan Update (Plan Update), which has not yet been adopted. The project cannot be subject to a Plan Update that is not yet in effect.”⁸

On March 13, 2024, despite staff’s recommendation to deny the appeal and approve the proposed project, the Commission voted to grant the appeal, effectively denying the

³ SB 330 Determination, City of Los Angeles Housing Department, pg. 2, September 16, 2021.

⁴ Gov. Code, § 66300.6, subd. (b)(1).

⁵ TOC Guidelines, City of Los Angeles Department of City Planning, pg. 7, February 26, 2018, available at <https://planning.lacity.gov/odocument/39fae0ef-f41d-49cc-9bd2-4e7a2eb528dd/TOCGuidelines.pdf>.

⁶ Adelante Eastside Redevelopment Plan Project Compliance Review, City of Los Angeles, August 31, 2024, available at <https://planning.lacity.gov/pdiscaseinfo/document/ODQ1OQ0/fe3b456d-e5a5-4f0e-9fa7-879f1ff43502/pdd>. Case No. DIR-2021-8626-RDP-HCA.

⁷ Appeal recommendation Report, East Area Planning Commission, March 13, 2024, available at https://planning.lacity.gov/plndoc/Staff_Reports/2024/03-13-2024/DIR_2021_8626_March_2024_.pdf.

⁸ Appeal recommendation Report, East Los Angeles Area Planning Commission, March 13, 2024.

Project.⁹ There is no further approval process for the Project. Pursuant to the HAA,¹⁰ the City made findings of denial.

Question: Do the City of Los Angeles' findings of denial for this project meet the requirements under the HAA?

Government Code section 65589.5, subdivision (j) states:

(1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

The findings in the Commission's "Letter of Determination" regarding the project denial on March 13, 2024 state that "East Los Angeles Area Planning Commission (ELAAPC) found that the Project will create a specific, adverse health impact on public health and safety by aggravating the displacement and gentrification in Boyle Heights through the introduction of 45 new market rate units in the community." The findings provide data regarding the high eviction rate in the Boyle Heights neighborhood and rapid gentrification of the area, arguing that this housing development will exacerbate these public health concerns.

HCD disagrees with the City's assertion that potential neighborhood-wide gentrification impacts associated with the Project satisfy the legal threshold necessary to deny the Project pursuant to the HAA. The HAA states that the significant, quantifiable, direct,

⁹ Letter of Determination, East Los Angeles Area Planning Commission, March 13, 2024, available at <https://planning.lacity.gov/pdiscaseinfo/document/MTY1MDk0/fe3b456d-e5a5-4f0e-9fa7-879f1ff43502/pdd>.

¹⁰ Gov. Code, § 65589.5, subd. (j).

and unavoidable health and safety impact must be “based on objective, identified written public health or safety standards, policies or conditions.” General neighborhood gentrification concerns are not significant, quantifiable, direct or unavoidable based on the City’s “written public health or safety standards, policies or conditions as they existed on the date the application was deemed complete.” The burden of proof is on the City to show by a preponderance of the evidence that this objective standard has been met. The City has failed to do so. Indeed, no such objective standard existed when the application was deemed complete. Accordingly, the City’s denial of the Project is inconsistent with the HAA.

Additionally, Government Code section 65589.5, subdivision (a)(2)(L) states, “It is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.” The intent of the HAA is to streamline housing developments that meet objective general plan, zoning, and subdivision criteria set by the jurisdiction. The Project was initially determined by the City to be consistent with the Adelante Eastside Redevelopment Plan (General Plan), and as such serves to implement the City’s General Plan. The HAA evidentiary standard of a preponderance of the evidence is a high bar for a local agency to make a finding of a “specific, adverse impact.” This bar can only be reached in instances where there is a significant, unavoidable, quantifiable, direct threat to the physical safety or health of residents. It is clearly not the intent of the HAA for cities to cite displacement and gentrification as a significant, unavoidable, quantifiable, direct threat to health and safety in an effort to deny development projects. Indeed, building new units, including affordable housing, along with implementing citywide policies to alleviate displacement and preserve affordable housing, will better address inequities faced by Boyle Heights residents. This development project would create 47 net new units by replacing 3 RSO residential units with 5 ELI units and 45 market-rate units.

Programs, Ordinances, and Actions to Address Gentrification and Displacement

Of course, HCD recognizes the importance of preserving long-term affordable housing and preventing the loss of affordable units and subsequent displacement of residents. The actions taken by the City to implement the programs in its housing element, as well as other actions, are the most effective and appropriate ways to address displacement concerns. The following programs and actions are steps the City has already taken or has committed to take to address ongoing displacement and gentrification:

- HCD is aware that on August 13, 2024, the Los Angeles City Council passed the Interim Control Ordinance (ICO) “adopted as an urgency measure pursuant to demolition permits on rent stabilized multi-family housing and covenanted affordable housing units in the Boyle Heights Community Plan area, to protect the public health, safety, and welfare of residents and stakeholders within the Boyle Heights Community.”¹¹ Due to a series of compounding factors such as an old housing stock, a high renter population, and a high percentage of low-income

¹¹ Ordinance No. 188333, Los Angeles City Council, August 12, 2024.

residents, Boyle Heights residents are particularly vulnerable to displacement as a result of demolition. On May 15, 2024, HCD issued a technical assistance letter determining that the relevant portion of the proposed draft ICO was consistent with state law under Government Code, section 66300, subdivision (i).¹² HCD would like to emphasize that Government Code, section 66300, subdivision (i) of the HCA remains a tool that the City can use to pass “a development policy, standard or condition” to protect affordable housing and preserve long-term affordable housing in the Boyle Heights community.

- Several programs outlined within Program 124 (Affirmatively Furthering Fair Housing (AFFH) of the City’s 6th cycle housing element commit the City to addressing displacement, developing affordable housing in high resource areas, and preserving long-term affordable housing:
 - Program 48 (Update Density Bonus and Other Affordable Housing Incentive Programs), Program 65 (Plan for Housing Growth and Place-Based Strategies in Community Plan Areas), and Program 121 (RHNA Re-Zoning) commit to, among other things, “expand where mixed-income projects may be created, with a particular focus in Higher Opportunity Areas.”¹³
 - Program 122 (Anti-Displacement Strategies) commits to “identify areas facing displacement to better target tenants’ rights outreach and education efforts, affordable housing preservation, and affordable housing subsidy programs, incorporating findings into existing tenant rights’ and affordable housing programs by 2023. Develop policy recommendations to address housing needs in areas facing displacement pressure in an Equitable Development and Anti-Displacement Study for use in future General Plan updates, rezoning efforts and policy development by Summer 2023.”¹⁴
 - Program 28 (Replacement Unit Program for Selected Sites) and Program 29 (Enforcement of No Net Loss and Affordable Housing Replacements Requirement) commit to, among other things, “require new housing developments to replace all affordable housing units lost due to new development. Record approximately 200 affordable housing replacement covenants per year. Extend replacement and right to return requirements prior to expiration of Housing Crisis Act in 2030 and evaluate best way to strengthen current requirements in order to make enhancements part of the Density Bonus update by 2024.”¹⁵

¹² HCD Technical Assistance Letter, RE: City of Los Angeles Boyle Heights Community Plan Area, May 15, 2024, available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/los-angeles-hau-051524.pdf>.

¹³ Los Angeles 6th Cycle Housing Element, pg. 352, June 14, 2022.

¹⁴ Los Angeles 6th Cycle Housing Element, pg. 359, June 14, 2022.

¹⁵ Ibid.

HCD applauds and encourages the City to continue to address gentrification and displacement in Boyle Heights by implementing related policies and prioritizing housing element program implementation in a timely manner.

Conclusion

The City's findings of denial under the HAA do not meet the legal threshold necessary to demonstrate that the Project would have a "specific, adverse impact on public health or safety unless the project is disapproved." The City must make findings of denial that meet the requirements of Government Code section 65589.5, subdivision (j) by a preponderance of the evidence, or otherwise approve the Project. Additionally, HCD has outlined several programs the City has committed to implement to address gentrification and displacement concerns – efforts that HCD strongly supports. Therefore, HCD urges the Commission to reverse its denial of the appeal and approve the Project.

Furthermore, HCD requests a response by November 1, 2024, explaining how the City will address HCD's findings.

HCD would also like to remind the City that HCD has statutory authority to enforce the Housing Accountability Act and Housing Element Law, among other state housing laws. Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a local government's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law.¹⁶ If you have questions or need additional information, please contact Helen Eldred at Helen.Eldred@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

¹⁶ Gov. Code, § 65585, subd. (j).