

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

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November 28, 2022

Bruce Moe, City Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

Dear Bruce Moe:

**RE: City of Manhattan Beach Denial of Highrose Housing Project and
Applicability of the Housing Accountability Act and State Density Bonus Law
– Notice of Violation**

The California Department of Housing and Community Development (HCD) has reviewed the City Council's denial of the Highrose Housing Project (Project) on October 18, 2022, and has found that in denying the Project, the City of Manhattan Beach (City) has violated the Housing Accountability Act (HAA) (Gov. Code, § 65589.5) and the State Density Bonus Law (SDBL) (Gov. Code, § 65915), as detailed in this letter. As you are aware, the State of California is in a housing crisis, and the provision of housing is a priority in the highest order.

The City has 30 days to respond to this letter. HCD requests that the City provide a written response to these findings no later than December 28, 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 and Project Description

The Project contains 79 units, including 73 market-rate units and six units affordable to very low-income (VLI) households). It is located at 401 Rosecrans Avenue (APN: 4137-001-031) and 3770 Highland Avenue (APN: 4137-001-027). The Project is entitled to a 35-percent density bonus because 11 percent of the base density (six units) is affordable to VLI households (Gov. Code, § 65915, subd. (f)(2)). The Project includes the following five development standard waiver requests: (1) buildable floor area, (2) height requirements, (3) number of stories, (4) side-yard setback requirement for proposed electrical transformer only, and (5) rear and side setback requirements for building walls over 24 feet in height. Additionally, the Project includes one requested concession for the maximum wall/fence height in setbacks.

On March 29, 2022, the Project received ministerial approval from the Community Development Director, who determined that it was consistent with the General Plan, Local Coastal Program, Municipal Code, and state law. The City found the Project to be in compliance with all objective standards except those lawfully modified under the SDBL (Gov. Code, § 65589.5, subd. (j)(3)). The Project was subsequently appealed to the Planning Commission, and on June 8, 2022, the Planning Commission upheld the Director's approval. The Project was then appealed to the City Council, which ultimately voted to deny the Project on October 18, 2022. The City Council made no findings supporting its denial. Prior to the City's denial of the Project, HCD sent a Letter of Support and Technical Assistance dated September 1, 2022, to the City stating that, based on information reviewed, the HAA and SDBL applied to the Project.

The City Council denied the Project despite HCD's technical assistance informing the City that the Project qualifies for the protections of the HAA and SDBL, which both require that a local agency make specific written findings in order to lawfully deny a qualifying project.

Analysis of Project Denial

The contents of City Council Resolution No. 22-0124, inclusive of the administrative record and documents cited by the Mayor during Council's deliberation, do not satisfy the statutory requirements for written findings of denial applicable under the HAA (Gov. Code, § 65589.5) and SDBL (Gov. Code, § 65915).

HCD listened to the City Council's deliberations at both meetings, and while councilmembers expressed a variety of concerns, none identified a specific adverse impact that would support Project denial. At the meeting on October 18, 2022, the Council discussed Assembly Bill 2011 (Chapter 647, Statutes of 2022) insofar as this law contains a provision removing certain projects located near oil refineries, such as the Project, from eligibility for CEQA streamlining.

Even if it had been in effect at the time of the Project application, AB 2011 is irrelevant to the Project for many reasons, including: (1) the Project does not seek CEQA streamlining under AB 2011; (2) the City's existing planning documents (e.g., General Plan, Local Coastal Program) permit residential uses on the site; and (3) CEQA and other environmental impact assessments have been performed to permit residential land uses on the site.

Housing Accountability Act Violation

The City Council wrongfully denied the Project under the HAA by failing to adopt written findings supported by a preponderance of the evidence on the record that the Project would (1) have a specific, adverse impact upon the public health or safety and (2) that there is no feasible method to satisfactorily mitigate or avoid the identified adverse impact (Gov. Code, § 65589.5, subd. (j)(1)).

State Density Bonus Law Violation

The City Council wrongfully denied the Project under the SDBL by failing to grant the Project a density bonus (Gov. Code, § 65915, subd. (b)) and by failing to grant the requested concessions and waivers (Gov. Code, § 65915, subds. (d-e)) to which the Project is entitled.

To have lawfully denied the requested concession, the City must have made one or more of the following specific written findings at the time of denial (Ibid): the concession would (1) not result in a cost reduction, (2) have a specific adverse impact on health or safety (as defined), or (3) be contrary to state or federal law (Gov. Code, § 65915, subd. (d)). To have lawfully denied one or more of the development standard waivers, the City must have determined that the granting of each waiver would have had a specific, adverse impact, as defined in Government Code section 65589.5, subdivision (d)(2), upon health or safety, and for which there was no feasible method to satisfactorily mitigate or avoid the specific adverse impact. The City made no such findings.

Housing Element Law

The City's Draft Housing Element dated August 12, 2022, includes a description of the Project in Section 5 (Planned, Approved, and Prospective Projects) of Appendix E (Sites Analysis and Inventory). The Project is described as providing 79 units, including 73 above moderate-income units and six lower-income units, which is consistent with the Project denied by the City Council. While the denial of the Project does not constitute a violation of State Housing Element Law, it calls into question the City's commitment to achieving its housing production goals.

Conclusion

HCD finds that by improperly denying the Project, the City is in violation of the Government Code sections referenced above. The City must provide a written response to this finding by December 28, 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.

The City's response should include, at a minimum, a specific plan and timeline for corrective action, including (1) the repeal of the City's resolution denying the Project and (2) the reconsideration and approval of the Project as proposed.

Bruce Moe, City Manager
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If you have questions or would like to discuss the content of this letter, please contact Brian Heaton of our staff at brian.heaton@hcd.ca.gov.

Sincerely,

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

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability