DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
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December 17, 2024

Deanna Chow, Community Development Director
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025

Dear Deanna Chow:

RE: City of Menlo Park – 3705 Haven Avenue – Letter of Technical Assistance

The purpose of this letter is to provide technical assistance to the City of Menlo Park (City) regarding whether the applicant of the mixed-income rental project proposed at 3705 Haven Avenue (Project) may request a State Density Bonus Law (SDBL) concession[1] to modify a local inclusionary zoning requirement in order to align with the rent limits identified in Health and Safety Code section 50053.

Background

Project: The California Department of Housing and Community Development (HCD) understands that the proposed Project would result in the construction of an eight-story, 112-unit multifamily building, including 10 units affordable to very low-income (VLI) households, four units affordable to moderate-income (MI) households, and 98 market-rate units. Using SDBL, the Project would provide 66 base units, of which 15 percent would be affordable to VLI households to qualify for an initial 50-percent density bonus[2] and 6 percent would be affordable to MI households to qualify for a 22.5-percent additional density bonus.[3] Pursuant to Government Code section 65915, subdivision (d)(2)(C), the applicant shall receive three incentives or concessions for a project that includes at least 15 percent for VLI households.

Inclusionary Zoning: The City's Municipal Code Chapter 16.96 contains a program for inclusionary zoning in the form of its Below Market Rate (BMR) housing program, which

[1] Gov. Code, § 65915, subd. (d).
[2] Gov. Code, § 65915, subd. (f).
[3] Gov. Code, § 65915, subd. (v).

is implemented by reference through the City's BMR Guidelines.[4] For development projects containing 20 or more units, the BMR housing program requires at least 15 percent of the units be at below market rates and that the affordable units at extremely low-, very low-, low-, and/or moderate-income levels "shall be roughly equivalent to the provision of all the affordable units at the low-income level."[5] As currently proposed, seven VLI units and three MI units in the Project are designated to satisfy the City's 15-percent BMR requirement. Combined, the ten BMR units satisfy the affordability provision because they average out to 71 percent of area median income (AMI), which is within the low-income category range of 50 to 80 percent of AMI.

Monthly Rental Cap: HCD understands that in 2010, the City Council adopted a BMR Guideline policy such that the monthly rental amounts for BMR units shall not exceed 75 percent of comparable market-rate rents. The intent of the rental cap was to ensure that deed-restricted BMR rents would be priced below market-rate rents. Depending on rental market conditions, the City's rental cap can result in a maximum monthly rent that is lower than the rent limits established by Health and Safety Code section 50053. This is especially true for MI units, which are calculated at 30 percent times 110 percent of area median income and adjusted for family size appropriate for the unit.[6]

Question: Can the Project applicant request an SDBL concession to modify a local inclusionary zoning requirement to align with the maximum rent limits established in Health and Safety Code section 50053?

Yes, a concession can be used to modify certain provisions of an inclusionary ordinance, including increasing the BMR rent limits to align with those established in state law, unless the City can make one of the three statutory findings of denial, one of which is that the concession would "not result in identifiable and actual cost reductions ... to provide for affordable housing costs...."[7] With respect to the Project, the City must consider the applicant's request to align the MI rent limits for the BMR units with those defined in Health and Safety Code section 50053, subdivision (b)(5). Furthermore, the SDBL places the burden of proof on the City to deny the requested concession.[8]

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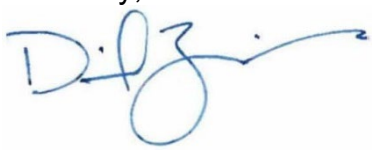
[4] City of Menlo Park. Below Market Rate Housing Program Guidelines (December 5, 2023), available at https://menlopark.gov/files/sharedassets/public/v/3/community-development/documents/housing/20231208-below-market-rate-guidelines.pdf
[5] City of Menlo Park. Below Market Rate Housing Program Guidelines, § 4.1.2, p. 4.
[6] H&S Code, § 50053, subd. (b)(5).
[7] Gov. Code, § 65915, subd. (d)(1)(A).
[8] Gov. Code, § 65915, subd. (d)(4).

Conclusion

HCD appreciates the opportunity to provide technical assistance on the relationship between the SDBL and the City's inclusionary zoning rental cap requirement. As the City is aware, HCD has statutory authority to enforce the SDBL, among other state housing laws, and 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.[9]

If you have any questions regarding the content of this letter or need additional technical assistance, please contact Grace Wu at Grace.Wu@hcd.ca.gov.

Sincerely,



David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

[9] Gov. Code, § 65585, subd. (j).