

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

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June 10, 2025

Christian Murdock, Community Development Director
City of Mountain View
500 Castro Street
Mountain View, CA 94041

Dear Christian Murdock:

RE: City of Mountain View, Condition of Approval – Letter of Technical Assistance

The purpose of this letter is for the California Department of Housing and Community Development (HCD) to provide technical assistance to the City of Mountain View (City) regarding whether the City can impose a condition of approval regarding below market rate (BMR) housing units on the housing development project proposed for 294-296 Tyrella Avenue (Project).

Background

HCD understands that on February 2, 2023, Tower Investment, LLC (Applicant) submitted a Preliminary Application to construct an 85-unit residential condominium building at 294-296 Tyrella Avenue, with 20 percent of the units affordable to low-income households (BMR units). The Project was later modified to include five fewer units, for a total of 80 units. HCD further understands that, since the Preliminary Application was submitted before the City adopted a substantially compliant housing element, the project qualifies as a Builder's Remedy project pursuant to the Housing Accountability Act (HAA).¹

Because the Project application was deemed complete on February 16, 2024 (prior to January 1, 2025), the Applicant may choose to be subject to the provisions of the HAA that were in place on the date the Preliminary Application was submitted, or they may choose to be subject to any or all of the provisions of the HAA applicable as of January 1, 2025.² This letter addresses both possible scenarios.

¹ Gov. Code, § 65589.5, subd. (h)(11).

² Gov. Code, § 65589.5, subd. (f)(7)(A).

Condition of Approval for BMR Units

The City wishes to apply the following condition of approval to the Project:

BMR UNITS – CONTINUED AFFORDABILITY: Government Code Section 65589.5 (effective January 1, 2024 – December 31, 2024), requires developers to provide sufficient legal commitments to ensure continued availability of units for very low or low-income households for at least 30 years. To meet this requirement, prior to issuance of a certificate of occupancy, Applicant shall 1) record a deed restriction that ensures the continued availability of the BMR units at 80% AMI for 30 years, and 2) enter into a regulatory agreement with the City of Mountain View (City), that sets forth the affordability requirements for the BMR units and authorizes annual compliance monitoring by City staff to ensure continued compliance with maximum rents and housing costs for residential units at 80% of AMI and to ensure occupants of all BMR Units qualify for the income-restricted units.

The Applicant does not want the City to monitor compliance with the affordability restrictions and would prefer to use a third-party administrator to complete annual compliance monitoring and submit annual reports to the City.

Question: Can the City apply its proposed condition of approval to the Project?

The answer is “yes.” The HAA provides limited authority for a city to condition the approval of housing development projects. Specifically, the HAA states that a local agency shall not condition approval of a housing development project for very low-, low-, or moderate-income households “in a manner that renders the housing development project ... infeasible” unless it makes certain written findings.³

In this case, the City may impose its proposed condition without making the specified written findings because it is unlikely that the condition would “render the housing development project infeasible.”

Note that the Project is subject to this part of the HAA because the Project meets the definition of a “housing development project for very low, low-, or moderate-income households” under both the pre-January 1, 2025 HAA⁴ and the post-January 1, 2025 HAA⁵ since it provides 20 percent of units affordable to low-income households.

³ Gov. Code, § 65589.5, subd. (d). The citation is the same for the pre-January 1, 2025 HAA and the post-January 1, 2025 HAA, though the language in the two versions differs slightly.

⁴ Gov. Code, § 65589.5, subd. (h)(3) as that paragraph read prior to January 1, 2025.

⁵ Gov. Code, § 65589.5, subds. (h)(3)(A), (C).

Conclusion

The City may condition approval of the Project using the proposed language included above. If you have any questions regarding the content of this letter or need additional technical assistance, please contact Stephanie Reyes at Stephanie.Reyes@hcd.ca.gov.

Sincerely,

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

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

cc: Jennifer Logue, City Attorney
Wayne Chen, Housing Director
Celena Chen, Senior Assistant City Attorney