

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

651 Bannan Street, Suite 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



January 28, 2026

Lina Velasco, Director of Community Development
City of Richmond
450 Civic Center Plaza
Richmond, CA 94804

Dear Lina Velasco:

RE: City of Richmond, Denial of CUP for Emergency Shelter – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received an inquiry regarding a denial of a Conditional Use Permit (CUP) for a proposed emergency shelter by the City of Richmond (City). This letter provides technical assistance to the City regarding lawful processing of applications for emergency shelters.

Project Background

On November 22, 2023, Gregory VanMechelen (Applicant), on behalf of California Portsmouth Square Association (Operator), filed Planning Application No. PLN23-360 requesting a CUP to convert an existing office building located at 207 37th Street in the T5MS-O (Main Street - Open) District to an emergency shelter with up to 25 beds (Project).

The City held the following hearings on the Project:

- June 6, 2024 Planning Commission hearing. The staff report for this hearing recommended conditional approval of the Project. The Commission voted to continue the hearing to July 18, 2024.
- July 18, 2024 Planning Commission hearing. The staff report for this hearing requested that the Commission provide direction regarding whether all of the required findings for a CUP¹ may be conditionally met, or if a quantifiable, adverse impact on health or safety can be documented. The Commission voted to continue the public hearing to enable staff to prepare a package to approve.
- November 7, 2024 Planning Commission hearing. The staff report for this hearing recommended conditional approval of the Project. The Commission

¹ Richmond Municipal Code (RMC), § 15.04.806.040.

voted to continue the public hearing to December 19, 2024 to allow staff to return with alternate findings that the requirements for a CUP cannot be met specifically regarding the safety, noise, and potential shelter resident activities that are incompatible with the neighborhood and surrounding uses for the Project.

- December 19, 2024 Planning Commission hearing. The staff report for this hearing recommended denying the Project. The Planning Commission voted to deny the Project.
- March 4, 2025 City Council appeal hearing. The staff report for this hearing recommended upholding the Planning Commission's denial of the Project. The City Council voted to uphold the denial.

The Operator had previously operated an emergency shelter on the site from May 2023 through August 2023 at the request of the City and its encampment resolution contractors, Housing Consortium of the East Bay and Ways 2 Love. No land use permits were needed at the time since the City was involved with the three-way arrangement to address an emergency situation at the Castro encampment.²

Analysis

By-Right Low Barrier Navigation Center Law

A Low Barrier Navigation Center (LBNC) is a Housing First, low-barrier, service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing.³

An LBNC is a use by-right in areas zoned for mixed use and nonresidential zones permitting multifamily uses if it meets the requirements of By-Right LBNC Law.⁴ Use by-right means that the local government's review may not require a CUP, planned unit development permit, or other discretionary local government review or approval that would constitute a "project" for purposes of the California Environmental Quality Act.⁵ The T5MS-O zone⁶ is a nonresidential zone⁷ and multifamily uses (specifically "Multi-Unit Dwellings") are permitted.⁸

² Agenda report for the March 4, 2025, Richmond City Council appeal hearing, available at <https://pub-richmond.escribemeetings.com/filestream.ashx?DocumentId=56626>.

³ Gov. Code, § 65660, subd. (a).

⁴ Gov. Code, § 65662.

⁵ Gov. Code, §§ 65660, subd. (b) and 65583.2, subd. (i).

⁶ RMC, § 15.04.402.050.

⁷ Residential zones are described in RMC, § 15.04.201.

⁸ RMC, § 15.04.402.070.A.

The City's processing of the Project did not analyze whether the Project is an LBNC that meets the requirements of By-Right LBNC Law. If so, the Project is a use by-right, and the City may not require a CUP.

Housing Accountability Act – Disapproval of Emergency Shelter

The Housing Accountability Act (HAA) prohibits a local agency from disapproving an emergency shelter unless it makes one of several written findings, based upon a preponderance of the evidence in the record.⁹ The staff report for the December 19, 2024, Planning Commission hearing, which recommended denial of the CUP, did not include an explicit analysis making the required findings under the HAA to justify its disapproval of the Project.

HCD is aware that the same staff report raised concerns of impacts on public health and safety from the Project in the analysis of whether the Project met the requirements of RMC section 15.04.806.040. However, under the HAA, an emergency shelter may only be denied if the City makes written findings, supported by a preponderance of evidence on the record, that (1) a specific, adverse impact upon the public health or safety would result and (2) mitigation of the adverse impact is not possible.¹⁰ The HAA defines a "specific, adverse impact" as 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."¹¹

HCD understands the two main concerns related to impacts on health and safety are litter management and security.

Litter Management

The staff report for the December 19, 2024, Planning Commission hearing stated that there had been problems with litter, illegal dumping, and potential vermin issues during May through August of 2023 when the Operator was operating a shelter at the site at the City's request. It is unclear whether litter, illegal dumping and *potential* vermin issues qualify as a "significant, quantifiable, direct, and unavoidable impact." Even if they do qualify, it is highly unlikely that "there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the ... development of the emergency shelter financially infeasible."¹²

⁹ Gov. Code, § 65589.5, subd. (d).

¹⁰ Gov. Code, § 65585, subd. (d)(2).

¹¹ *Id.*

¹² *Id.*

The staff report stated that the City proposed conditions to address those public health and safety concerns, but the applicant “does not appear to seek compliance with those conditions.” The proposed conditions, found in the staff report for the November 7, 2024 Planning Commission meeting, state: “At all times, Operator and on-site management must ensure that the site *and adjacent area* is kept free of litter at all times. This shall include the driveway to the rear of the project site, the public rights-of-way on 37th Street and Bissel Avenue immediately abutting the project site *and abutting properties, the adjacent corners across Bissel Ave and across 37th Street, and the public right-of-way along 37th Street to the corner of Macdonald Avenue.*” (Emphasis added.)

The City’s standards regarding litter management state:

“Each person, company or corporation residing in and/or using a property in the City of Richmond shall, at all times, maintain *such property* in good order. This shall include a litter management program and repair and maintenance of all structures, fences, signs, walks, driveways, paving, striping, lawns, landscaping, painting, etc., as may be necessary to preserve a quality environment.”¹³ (Emphasis added.)

However, the proposed condition goes beyond requiring the Operator to maintain *their property* in good order by additionally requiring the Operator to keep the adjacent areas free of litter at all times. This is inconsistent with the HAA requirement that findings be based on “objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.”

Furthermore, while the Operator’s written comments submitted on November 1, 2024, in response to the staff report for the November 7, 2024, Planning Commission meeting expressed concerns that requiring the Operator to clean public streets may constitute regulatory overreach, the comments do not include a refusal to comply with any conditions regarding litter management.

Security

The staff report for the December 19, 2024, Planning Commission hearing also included a narrative regarding security, which stated: “The Project is located adjacent to a residential neighborhood and in close proximity to schools where many minors/children walk past and in close proximity to the Project Site.” The staff report also stated that calls to the Richmond Police Department for service were higher during the May 2023 through August 2023 timeframe (when the Operator was operating a shelter at the site) compared to the same months during previous years and in 2024.

¹³ RMC, § 15.04.601.080.

The statements that the Project is located near a residential neighborhood and schools, and that there was an increase in calls for service while the shelter was in operation do not constitute a “significant, quantifiable, direct, and unavoidable impact” on public health and safety based on objective, identified written public health or safety standards, policies, or conditions. There is no evidence of, for example, an increase in criminal activity during the time the shelter was in operation.

As a reminder, “the burden of proof shall be on the local legislative body” to make the findings contained in subdivision (d) of the HAA.¹⁴

Housing Accountability Act – Limits on Conditions

The HAA also prohibits a local agency from conditioning approval of an emergency shelter in a manner that renders the emergency shelter infeasible unless it makes one of several written findings, based upon a preponderance of the evidence in the record.¹⁵ The December 19, 2024, Planning Commission staff report includes two conditions that may render the emergency shelter infeasible and does not make the required findings to impose those conditions.

Security Personnel

The December 19, 2024, Planning Commission staff report states that the conditions of approval for the Project include a minimum of three daytime staff and two nighttime staff, not including security personnel, and two onsite uniformed security personnel. This contrasts with the conditions originally proposed in the November 7, 2024, Planning Commission staff report, which required that the management team (three daytime staff and two nighttime staff) *include* two security personnel.

The Operator had proposed that management staff would receive formal training and licensed guard cards from the California State Bureau of Security and Investigative Services, which would have met the original condition. However, meeting the revised condition for two security personnel *in addition to* three management personnel would increase costs for shelter operation substantially. Such an additional cost may render the Project infeasible. If so, the City may not impose that condition without making the required findings under the HAA.

¹⁴ Gov Code, § 65589.5, subd. (i).

¹⁵ Gov. Code, § 65589.5, subd. (d).

Parking

The December 19, 2024, Planning Commission staff report required “more than three parking spaces.”. However, the staff report also states that “[a]t most, the Project Site can accommodate three on-site parking spaces.” Requiring the Project to provide more than three parking spaces, when the site can only accommodate three spaces, would render the Project infeasible. As such, the City may not impose that condition without making the required findings under the HAA.

State Housing Element Law

As the City is aware, through Housing Element Law, the Legislature has established that “the availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian, including farmworkers, is a priority of the highest order.”¹⁶

The City contributes to this statewide effort through its adopted housing programs in its 6th Cycle Housing Element (2023-2031).¹⁷ HCD “shall review any action or failure to act by [the City] that it determines is inconsistent with an adopted housing element..., including any failure to implement any program actions included in the housing element...”¹⁸ Moreover, if HCD “finds that the action or failure to act by [the City] does not substantially comply with this article,” HCD may revoke its findings that the City’s housing element is in compliance with Housing Element Law until it determines that the City has come into compliance with state law.

The City’s denial of the Project is inconsistent with several goals, policies, and programs of the City’s 6th Cycle Housing Element including, but not limited to:

- Goal 4: Create housing opportunities for people with special needs, including seniors, persons with disabilities, single-parent households, first-time homebuyers, large families, unhoused individuals and families.
- Policy 4.6: Emergency, Transitional, and Supportive Housing: Actively seek to expand emergency, transitional, and supportive housing to address homelessness in Richmond.
- Program 4.G: Low Barrier Navigation Centers and Emergency Shelters: State law requires LBNCs to be permitted by-right in areas zoned for mixed-use and nonresidential zones permitting multi-family uses provided they satisfy the provisions established by AB 101 (see Government Code Section 65662).

¹⁶ Gov. Code, § 65580, subd. (a).

¹⁷ Available at <https://www.ci.richmond.ca.us/4231/Housing-Element>.

¹⁸ Gov. Code, § 65585, subd. (i).

Conclusion

HCD has enforcement authority over By-Right LBNC Law, the HAA, and State Housing Element Law. Accordingly, HCD may review local government actions to determine consistency with these laws. If HCD finds that a jurisdiction is in violation of state law, HCD may notify the California Office of the Attorney General.¹⁹

HCD requests a written response from the City by February 28, 2026 indicating how the City plans to implement the guidance provided in this letter. The City's response should include, at a minimum, a specific plan and timeline to review the Project application in accordance with the requirements of By-Right LBNC Law, the HAA, and State Housing Element Law.

If you have any questions regarding this letter or require additional technical assistance, please contact Stephanie Reyes at stephanie.reyes@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melinda Coy', with a long horizontal stroke extending to the right.

Melinda Coy
Housing Accountability Unit Chief

¹⁹ Gov. Code, § 65585, subds. (i) and (j).