

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



August 7, 2023

Deborah Drasler, Contract Senior Planner
City of Westminster, Planning Division
8200 Westminster Boulevard
Westminster, CA 92683

Dear Deborah Drasler:

RE: Replacement Unit Requirements – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received a request for technical assistance from the City of Westminster seeking clarification regarding replacement unit requirements under the Housing Crisis Act (HCA) (Gov. Code, § 66300) and State Density Bonus Law (SDBL) (Gov. Code, § 65915) as they relate to the project proposed at 13800-13812 Milton Avenue (the Project).

Summary of Request

HCD understands that the Project proposes a 100 percent affordable housing development at 13800-13812 Milton Ave in the City of Westminster (City). The Project is seeking an 80 percent increase in density under the SDBL and will consist of 53 units of low-income senior housing and one market-rate manager's unit. The senior housing units will be one-bedroom units, and the manager's unit will be two bedrooms. HCD understands that the site previously contained residential dwelling units that were demolished in August 2022. It appears there is a discrepancy regarding both the number of units and number of associated bedrooms that previously existed on the site. The Phase 1 Environmental Report determined that 4 units existed on the site with the following bedroom configuration: one studio unit; one 1-bedroom single-family residence; one 2-bedroom single-family residence; and one 3-bedroom single-family residence. In contrast, the City's permit records indicate that three units previously existed on the site with the following bedroom configurations: one 1-bedroom single-family residence and two 2-bedroom single-family residences. Additionally, it appears the units were vacated in 2017, and the Applicant does not have the income information of the previous tenants.

The City is seeking clarification on equivalent size requirements and whether the proposed affordability levels and household type would satisfy replacement requirements under the HCA and the SDBL. The following questions are paraphrased from the technical assistance request sent by the City to HCD via the Housing Accountability Unit online portal on May 5, 2023 and additional questions sent in a follow-up email dated May 17, 2023. Due to the discrepancy in unit count and bedroom

configuration of the demolished units, HCD utilized the greater number of total units and bedrooms, 4 dwelling units with 7 total bedrooms, for the purposes of this letter. HCD provides the following direction and best practices based on the City's inquiry.

Question 1: Can the City enact a development policy, standard, or condition that would be less protective than the State's requirement for "equivalent size?"

No. At a minimum, the statutes require that protected units be replaced both in terms of unit count and in the total aggregate number of bedrooms.

The HCA and the SDBL's replacement provisions define equivalent size as, "the replacement units contain at least the same total number of bedrooms as the units being replaced" (Gov. Code, §§ 66300, subd. (d)(2)(F) and 65915, subd. (c)(3)(D)). To satisfy the requirements of this provision, the same total number of bedrooms contained in the protected units that previously existed on the site must be replaced. However, there is flexibility in terms of the bedroom configuration of each individual replacement unit.

Note that the HCA does authorize a local agency to adopt local replacement requirements that are more restrictive and protective of lower-income households than those provided in the statute. (Gov. Code, §66300, subd. (d)(3).)

Question 2: The proposed development is deed-restricted to seniors only. Is a deed-restricted development for lower-income senior housing equivalent to "all renter households" and does it satisfy the intent within the jurisdiction?

The replacement provisions of the SDBL do not specify household type for units being replaced pursuant to Government Code section 65915, subdivision (c)(3)(B)(ii).

Therefore, so long as the Project provides replacement units with affordability levels of the same proportion of low-income and very low-income renter households to all renter households within the City of Westminster, based on the most recent Comprehensive Housing Affordability Strategy (CHAS) database, the Project is considered in compliance with this provision, even if the replacement units are restricted to senior households. It has been communicated to HCD that the proposed Project is for 100 percent low-income units. Please be aware that this provision provides for both low-income and very low-income units based on the CHAS database.

Question 3: If the project does not replace the units with equivalent size, is it considered ineligible for a density bonus or any other incentives or concessions?

Yes, the SDBL replacement provisions require that units demolished in the five-year period preceding the application be replaced in equivalent size in order to be eligible for

a density bonus or any other incentives or concessions that the housing development project proposes. (Gov. Code, § 65915, subd. (c)(3)(A)-(B)(ii).) Specifically, the SDBL provides the following:

An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, unless the proposed housing development replaces those units. . . .(Gov. Code, § 65915, subd. (c)(3)(A)(i)-(ii).)

The overall project must provide at least the same number of units that previously existed on the site. Protected units must be replaced both in terms of unit count and in the total aggregate number of bedrooms. Please be aware that absent site-specific tenant income data, the affordability levels of the replacement units must also be in the same proportion as the low-income and very low-income households in the City based on recent CHAS data to qualify for a density bonus including any incentive, concession, and waiver request. Please refer to Question 2 above for the full definition of “replace” for the purposes of the SDBL.

Question 4: In addition to the one-bedroom residential units proposed, does the applicant also have to provide a three-bedroom and a two-bedroom replacement unit?

No, the Project must provide replacement units that contain at least the same *total* number of bedrooms as the units being replaced. (Gov. Code, § 66300, subd. (d)(2)(F)(iii) and Gov. Code, § 65915, subd. (c)(3)(D).) The replacement units are not required to have the same exact bedroom configuration as the demolished units so long as the correct total number of units are being replaced and the correct total aggregate number of bedrooms are being replaced. If the Project site previously contained 4 dwelling units consisting of a studio unit, one-bedroom single-family residence, two-bedroom single-family residence, and three-bedroom single-family residence; the Project must provide at least 4 units that contain at least 7 bedrooms total across the project. As such, the Project’s proposed total of 53 units with 53 bedrooms, exclusive of the manager’s unit, exceed the equivalent size replacement requirements.

Question 5: Can the City deny the project or condition the project to meet the replacement unit requirements?

Yes, the City can deny or condition the approval of the project if it does not meet the replacement unit requirements in state law as explained in Questions 2 and 3. Government Code section 66300, subdivision (d)(1)-(2), prohibits an affected city or an affected county from approving a housing development project that will require the demolition of one or more residential dwelling units unless the project will create at least as many residential dwelling units as will be demolished and includes replacement

requirements for projects involving protected units, as specified. As stated in Questions 2 and 3, the Project must provide replacement units of equivalent size and in the same proportion of low-income and very low-income renter households in the jurisdiction. The City must ensure these replacement requirements are met in order to approve the Project.

Question 6: The manager's two-bedroom unit is not deed-restricted to lower-income seniors. Therefore, does the manager's two-bedroom unit count towards one of the replacement units?

No, the manager's two-bedroom unit cannot serve as a replacement unit because it will presumably be a market-rate unit. A replacement unit is a deed-restricted affordable unit that serves to replace a protected unit that has been demolished.

Conclusion

Projects that involve the demolition of protected units must provide at least the same number of replacement units with the same total aggregate number of bedrooms. Additionally, if the income levels of the previous tenants are unknown, the project must provide replacement units with affordability levels that are in the same proportion as the low-income and very low-income renters in the jurisdiction based on the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database.

If you have questions or need additional information, please contact Deepeeka Dhaliwal at Deepeeka.Dhaliwal@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Housing Accountability Unit Chief

cc: Christopher Wong, Senior Planner, City of Westminster, Planning Division