

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

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February 5, 2024

Erik Krause, Deputy Director
City of Glendale
Community Development
633 E. Broadway
Glendale, CA 91206

Dear Erik Krause:

RE: Discretionary Review of State Density Bonus Law Waiver Requests – Letter of Technical Assistance

The purpose of this letter is to provide technical assistance to the City of Glendale (City) regarding the City's processing of density bonus applications and associated development standards waiver requests under the State Density Bonus Law (SDBL) (Gov. Code, § 65915, et seq.). The California Department of Housing and Community Development (HCD) received a request for technical assistance regarding the City's Municipal Code Chapter 30.36, a provision of the City's municipal code that appears to impose a discretionary review process on density bonus applications that include development standard waiver requests.

Discretionary Review of Waiver Requests under SDBL

Glendale Municipal Code 30.36.040 (A) provides that a density bonus housing project requesting approval for "a density bonus, incentives or concessions, and/or parking concessions shall be reviewed by the director of community development without a public hearing." However, a density bonus housing project that also includes "a request for waivers or reductions in development standards shall be reviewed by the hearing officer with a public hearing." (GMC 30.36.040 (B)). The City thus creates two procedural pathways for density bonus projects: a simpler process for applications that request only concessions (i.e., no public hearing required) and a more complex process for applications that request development standard waivers (i.e., public hearing required.)

The SDBL provides clear language indicating that the granting of appropriate development standard waivers is mandatory. Specifically, it provides that:

"[I]n no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a

development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section.” (Gov. Code, § 65915 subd. (e)(1).)

Second, the SDBL states that:

“[t]he granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other *discretionary approval*.” (Gov. Code §65915 subd. (f)(5), emphasis added.)

A development project meeting the requirements of the SDBL is entitled to not only an increase in the number of units allowed on the site (i.e., a “density bonus”), but also to a prescribed number of concessions/incentives and any development standard waivers which are necessary to facilitate the project overall.

Because granting development standard waivers necessary for the construction of compliant SDBL projects is mandatory, HCD encourages the City not to hold public hearings on these requests. Public hearings may create the perception of discretionary power where none exists. This, in turn, could place elected officials under pressure to unlawfully deny development standard waiver requests necessary for the completion of projects that meet the SDBL’s requirements. As noted, any such denials which “will have the effect of physically precluding construction of a development” violate the law. (Gov. Code, § 65915, subd. (e)(1).)

Because public hearings, by their very nature, invite prohibited discretionary consideration, HCD encourages the City to approve SDBL applications with waiver requests in the same manner it approves applications without waiver requests and end the practice of requiring a public hearing.

Housing Element Commitments

HCD reminds the City of Programs 8B and 9A, included in Glendale’s 6th Cycle Housing Element. Under Program 8B, the City plans to “increase the number of projects subject to approval by staff and the Director of Community Development and to reduce the number and need for public hearings where other opportunities are provided for public input into the decision-making process.” Additionally, Program 9A plans to remove “governmental constraints to the maintenance, improvement, and development of housing,” and the City aims to annually monitor and ensure consistency with federal and state legislation impacting housing.

In light of these two programs, HCD encourages the City to review Municipal Code 30.36.040 and make it consistent with the SDBL by removing the required public hearing for any SDBL projects seeking development standard waivers.

Conclusion

HCD encourages the City's efforts to prioritize reducing and removing governmental constraints to improve and increase the overall supply of housing. Failure to do so results in prolonged application review processes and unnecessary delay in project approval. Moving forward, HCD expects the City to continue to implement Programs 8B and 9A as outlined in its 6th Cycle Housing Element to improve permit streamlining and remove governmental constraints on the development of housing.

HCD reminds the City that HCD has enforcement authority over State Housing Element Law and State Density Bonus Law, among other state housing laws. Accordingly, HCD 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. (Gov. Code, § 65585, subd. (j).)

HCD recognizes the challenge of interpreting evolving housing and land use laws and appreciates the opportunity to provide technical assistance. If you have any questions regarding the content of this letter or would like additional technical assistance, please contact Mehrsa Imani, of our staff, at mehrsa.imani@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name being more prominent.

Shannan West
Housing Accountability Unit Chief