



City of Camarillo

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Submitted electronically to:
David.Zisser@hcd.ca.gov

July 27, 2023

David Zisser
State of California
Department of Housing and Community Development
Division of Housing Policy Development
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833

RE: City of Camarillo's SB-9 Ordinance Under Housing Crisis Act (Gov. Code, § 66300), ADU Law (Gov. Code, § 65852.2), etc. – Letter of Technical Assistance

Dear Mr. Zisser:

Thank you for your letter dated June 19, 2023 attached hereto, which has been received and reviewed by the City of Camarillo. As stated in our brief initial response, also attached, we were reviewing the letter and its comments and would respond further by July 31, 2023. Your legal and technical feedback on the City's SB-9 Ordinance has been beneficial. We recognize the State of California's need for additional housing, and we desire to comply with State law. We would like to respond to your letter by noting the areas where we have reviewed your technical feedback and agree to seek further revisions to the City's SB-9 Ordinance in line with the Department's recommendations. However, there are areas in your letter where the Department's analysis or recommendations are unclear, and we write in the hopes that the Department may consider the City's questions and provide supplemental information about what actions the Department is requesting that the City take.

Limitation on Number of Dwelling Units

The Department's letter states that:

Section 19.14.170 (E) and Section 19.56.130 – *Two Unit Limit/ADUs* – The Ordinance states, "No more than two dwelling units may be developed on the underlying parcel. Existing accessory dwelling units and junior accessory dwelling units will be counted toward this maximum number of units." However, this imposes a two-unit cap on all single-family lots, even in

instances when a lot split has not occurred. (Gov. Code, § 66411.7, subd. (j).) Imposing a two-unit cap on unsplit lots would also violate State ADU Law. (Gov. Code, § 65852.2, subs. (a) and (e).) Therefore, the City must remove this limitation.

Having reviewed Government Code section 65852.21(f) and 66411.7(j)(1), the City agrees with the Department's interpretation of SB-9 and state ADU law, and will be revising its SB-9 Ordinance to address this issue. In the interim, City staff will not be enforcing this restriction in the SB-9 Ordinance, and note that the SB-9 Ordinance includes a severability provision.

Affordability Requirement

The Department's letter notes that Section 19.14.170 (K)(44)(b) – Affordability Deed Restriction, requires a deed restriction that request that each urban dwelling must be for rent and restricted to low-income households for a period of 55 years from the issuance of a Certificate of Occupancy, that resets with each property transfer. The City acknowledges that Government Code section 65850, subdivision (g), authorizes local agencies to adopt an inclusionary housing ordinance that includes residential rental units affordable to lower- and moderate-income households, but that under section 65850.01, the Department has the authority to review an inclusionary requirement that exceeds 15 percent and to request a local jurisdiction submit an economic feasibility study providing “evidence that the ordinance does not unduly constrain the production of housing.”

The City is presently evaluating how to undertake an economic feasibility study as requested by the Department. In the event that the City determines not to undertake an economic feasibility study, the City will remove the requirement.

Size and Height Limits - Applicability of Housing Crisis Act of 2019

The Department's letter indicates that the size and height limits adopted by the City violate the Housing Crisis Act of 2019, as set forth in Government Code section 66300, subdivision (b)(1)(A). However, Department's letter quotes statutory language that states that this law prohibits a local agency from changing zoning or requiring a less intensive use “below what was allowed under the land use designation or zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018, except as otherwise [allowed under the statute] . . .” Importantly, SB-9 did not exist on January 1, 2018, as it was not passed by the legislature until September 2021 and did not go into effect until 2020. Additionally, the City of Camarillo did not, as part of its SB-9 Ordinance, replace or modify the development standards for the R-1 Single Family zone, as set forth in Chapter 19.14 of the Camarillo Municipal Code. In sum, all of the options to develop a lot in the R-1 zone in the City of Camarillo that were available to an applicant on January 1, 2018 *continue to remain available to an applicant today*, notwithstanding the passage of SB-9 or the City's adoption of the SB-9 Ordinance. Accordingly, it is unclear how the Housing Crisis Act of 2019 applies.

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

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June 19, 2023

Joe Vacca, Director
Department of Community Development
City of Camarillo
601 Carmen Drive
Camarillo, CA 93010

Dear Joe Vacca:

RE: City of Camarillo's SB 9 Ordinance under Housing Crisis Act (Gov. Code, § 66300), ADU Law (Gov. Code, § 65852.2), etc. – Letter of Technical Assistance

The purpose of this letter is to provide technical assistance to the City of Camarillo (City) regarding the relationship between its adopted Senate Bill 9 (Chapter 162, Statutes of 2021) (SB 9) implementation ordinance (Ordinance 1188) ("Ordinance") and the Housing Crisis Act of 2019 (Gov. Code, § 66300), among other relevant state housing laws. The California Department of Housing and Community Development (HCD) received several complaints raising concerns that certain provisions of the Ordinance may violate state law. HCD subsequently reviewed the adopted ordinance and other publicly available materials. This letter identifies several concerning provisions of the Ordinance and describes the ways in which these provisions likely violate the Housing Crisis Act of 2019.

This letter also identifies provisions of the Ordinance that raise concerns under other housing laws that HCD enforces, such as Housing Element Law (Gov. Code, § 65580 et seq.) and Accessory Dwelling Unit (ADU) Law (Gov. Code, §§ 65852.2 and 65852.22).

Housing Crisis Act of 2019 (Gov. Code, § 66300)

The Housing Crisis Act of 2019 (HCA) limits the ability of a local agency to reduce the intensity of land use anywhere where housing is an allowable use without concurrently increasing the intensity of land use elsewhere to compensate for the loss of residential development capacity. The HCA defines reductions in the intensity of land use to include the addition or modification of development standards. Specifically, the law provides the following:

Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use

designation, specific plan land use designation, or zoning district in effect at the time of the proposed change, below what was allowed under the land use designation or zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018, except as otherwise provided in clause (ii) of subparagraph (B) or subdivision (i). For purposes of this subparagraph, “reducing the intensity of land use” includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or any other action that would individually or cumulatively reduce the site’s residential development capacity.

(Gov. Code, § 66300, subd. (b)(1)(A).)

Governmental Constraints under Housing Element Law (Gov. Code, §§ 65580-65589.11)

Housing elements are required to contain an analysis of potential and actual governmental constraints on the development of housing for all income levels. (Gov. Code, § 65583, subd. (a)(5).) This includes, but is not limited to, analysis of land use controls, building codes and their enforcement, and locally adopted ordinances that directly impact the cost and supply of residential development. After identifying governmental constraints, the City must implement programs to remove those governmental constraints to the development of housing where legally possible. (Gov. Code, § 65583, subd. (c)(3).)

ADU Law (Gov. Code, §§ 65852.2 and 65858.22)

SB 9 and ADU Law are complementary. Both laws can be implemented in ways that result in developments with both “SB 9 Units” and ADUs. When combined, up to four units may be built in the same lot area typically used for a single-family home. The calculation varies slightly depending on whether a lot split is involved, but the outcomes regarding total maximum unit counts are identical. Only in the cases of the use of both sections of SB 9 (i.e., Gov. Code, §§ 65852.21 and 66411.7) – as in, two primary units on a lot resulting from an SB 9 lot split – is ADU Law superseded; in all other cases, State ADU Law applies.

Findings

- Section 19.14.170 (E) and Section 19.56.130 – *Two Unit Limit/ADUs* – The Ordinance states, “No more than two dwelling units may be developed on the underlying parcel. Existing accessory dwelling units and junior

accessory dwelling units will be counted toward this maximum number of units.” However, this imposes a two-unit cap on all single-family lots, even in instances when a lot split has not occurred. (Gov. Code, § 66411.7, subd. (j).) Imposing a two-unit cap on unsplit lots would also violate State ADU Law. (Gov. Code, § 65852.2, subds. (a) and (e).) Therefore, the City must remove this limitation.

- Section 19.14.170 (K)(23) – *Size Restrictions* – The Ordinance states that “the maximum habitable square footage allowed per urban dwelling is 800 square feet...” and that “[e]ach urban dwelling must have a minimum of 700 square feet....” However, the maximum size represents a reduction in the intensity of land use in violation of Government Code section 66300, subdivision (b)(1)(A), as any large lot would see an extreme reduction in the developable floor area compared to existing zone development standards. Additionally, the minimum size requirement constitutes a governmental constraint on the production of housing under Government Code section 65583, subdivision (g), as smaller or even efficiency units may be appropriate for some homeowners. Therefore, the City must remove this section.
- Section 19.14.170 (K)(28) – *Height* – The Ordinance states that “the maximum building height for any new urban dwelling unit is one-story up to 16 feet.” However, Section 19.14.100 states that in the R-1 Single Family zone, “[b]uilding height shall not exceed twenty-five feet in height with the exception of antennas or where permitted by conditional use permit.” Therefore, the required reduction in height also constitutes a reduction in the intensity of land use specific to SB 9 units in violation of Government Code section 66300, subdivision (b)(1)(A). Therefore, the City must remove this reference or amend it to state that urban dwelling units may be the same height as the underlying zoning permits for single-family development. Be advised that in practice, preventing two-story structures means the lot coverage will necessarily increase to accommodate the units.
- Section 19.14.170 (K)(44)(b) – *Affordability Deed Restriction* – The Ordinance requires a deed restriction wherein “[a]ny new urban dwelling must be for rent and restricted to low-income households....” The terms of the deed restriction “will be 55 years from the issuance of a Certificate of Occupancy, that resets with each property transfer.” In practice, the terms of the deed restriction would likely last in perpetuity.

However, while inclusionary zoning requirements are a well-used and important tool for the creation of affordable housing, this requirement is equivalent to either a 50-, 75- or 100-percent inclusionary requirement that is not imposed on any other type of residential development in Camarillo.

While Government Code section 65850, subdivision (g), authorizes local agencies to adopt an inclusionary housing ordinance that includes residential rental units affordable to lower- and moderate-income households, under section 65850.01, HCD has the authority to review an inclusionary requirement that exceeds 15 percent and to request a local jurisdiction submit an economic feasibility study providing “evidence that the ordinance does not unduly constrain the production of housing....” Absent an economic feasibility study showing otherwise, the Ordinance’s inclusionary requirements raises concerns it may render implementation of SB 9 economically infeasible. Therefore, the City should remove the requirement.

- *Urgency Ordinance* – Ordinance No. 1188 was adopted as an “urgency ordinance” on December 8, 2021. Please be advised that the term “urgency ordinance” does not appear in any section of the Government Code relevant to zoning code changes affecting the intensity of land use. Interim ordinances may be adopted to make zoning changes, but they have particular requirements and are limited in duration.¹ As the findings herein constitute violations of statute that merit a replacement ordinance in any case, HCD advises, as a courtesy, that the City review state law on interim ordinances to avoid future violations.

Conclusion

Separately and collectively, these development standards and other requirements reduce the intensity of land use, constituting potential violations of the HCA. They also raise concerns under Housing Element Law and State ADU Law.

HCD would like to remind the City that under Government Code section 65585, subdivision (j), HCD has enforcement authority over these and other housing laws. Accordingly, HCD may review local government actions to determine consistency with these and other laws. (Gov. Code, § 65585, subd. (i).) If HCD finds that a city’s actions do not comply with state law, HCD may notify the California Office of the Attorney General. (Gov. Code, § 65585, subd. (j).)

¹ Please see Government Code sections 65850 and 65853-65858 for a review of zoning ordinances and of interim zoning ordinances in particular.

Thank you for your prompt attention to this matter. HCD recommends that the City conduct a comprehensive review of the HCA and other applicable state housing laws² and update its SB 9 implementing ordinance accordingly. Additionally, HCD requests that the City respond in writing within 30 days of June 19, 2023. The City's response should include a proposed timeline for corrective actions. If you have questions or need additional information, please contact Mike Van Gorder, of our staff, at mike.vangorder@hcd.ca.gov.

Sincerely,



David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

² While it is beyond the scope of this letter to detail conflicts between the Ordinance and SB 9, (Gov. Codes, §§ 65852.21, 66411.7) the following sections were noted as containing such conflicts: 19.14.170 subdivisions (B)(1), (E), (F), (K), (K)(23), (K)(26), (K)(44)(a)(i); 19.14.180 subdivisions (B)(2), (I)(i). Please refer to HCD's SB 9 Fact Sheet, available at <https://www.hcd.ca.gov/docs/planning-and-community-development/sb9factsheet.pdf>, to bring the Ordinance into compliance with state law.



City of Camarillo

Department of Community Development

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July 18, 2023

Dave Garza
Accessory Dwelling Unit Team Manager
Housing Policy Development Division
Housing and Community Development
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833

SUBJECT: City of Camarillo SB 9 Ordinance Corrective Action Plan in response to HCD's Letter

The City of Camarillo received the Department of Housing and Community Development (HCD), Division of Housing Policy Development letter dated June 19, 2023. The City is currently analyzing the HCD's comments as it relates to its SB 9 Ordinance and will have a response prior to July 31.

If you have any questions, please contact David Moe, Acting Community Development Director at 805.388.5366 or dmoe@cityofcamarillo.org.

Sincerely,

David Moe
Acting Community Development Director

Attachments: HCD Letter Dated June 19, 2023

cc: Greg Ramirez, City Manager
Carmen Nichols, Assistant City Manager