

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

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April 29, 2022

Scott Reimers
City of Temple City
Community Development Director
9701 Las Tunas Drive
Temple City, CA 91780

Dear Scott Reimers:

RE: City of Temple City – Housing Crisis Act, Letter of Technical Assistance

The purpose of this letter is to provide technical assistance to the City of Temple City (City) regarding the relationship between its recently adopted Senate Bill (SB) 9 implementation ordinance (Ordinance Nos. 21-1058 U, 21-1059) (“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 a complaint in which concerns were raised 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 (HCA).

This letter also identifies provisions of the Ordinance that raise concerns under other housing laws, such as State Housing Element Law (Gov. Code, § 65580 et seq.), Accessory Dwelling Unit (ADU) Law (Gov. Code, § 65852.2), Affirmatively Furthering Fair Housing (AFFH) (Gov. Code, § 8899.50), and Anti-Discrimination in Land Use Law (Gov. Code, § 65008). These additional concerns are addressed briefly in anticipation of the forthcoming 6th Cycle Temple City Housing Element review letter.

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

The 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).) In addition, the HCA is to be broadly construed to maximize the development of housing.

HCD’s analysis of the adopted Ordinance involved identifying new or modified development standards, comparing those development standards against the development standards applicable to the R-1 Zone District and in effect on January 1, 2018¹, and noting instances that suggested a reduction in residential development capacity. In reviewing materials from the October 5, 2021; November 9, 2021; December 7, 2021; and January 4, 2022, Planning Commission and City Council meetings, it appears that the potential impacts of the HCA on the Ordinance were not discussed. For this reason, HCD assumes that no HCA analysis was undertaken and no concurrent and compensatory increase in the intensity of land use pursuant to subdivision (i) of Government Code section 66300 occurred.

Development Standard 1: Maximum Unit Size of 800 Square Feet.²The Ordinance creates new maximum size standards for residential development that appear to reduce the intensity of land use. The Ordinance limits the maximum size of a dwelling built under SB 9 to 800 square feet (TCMC 9-1T-21.A.4.c). The development standards of the R-1 Zone District currently impose no equivalent limitation on the absolute maximum size of dwellings. Rather, the R-1 Zone District regulates the size of dwellings by a combination of maximum floor area ratios and maximum floor areas, which vary depending on lot area, depth, and whether the dwelling is one or two stories in height. It is beyond the scope of this letter to comprehensively describe the intricacies of these development standards; however, by examining the maximum lot

¹ For the purposes of this analysis, HCD assumes that the relevant current development standards were in effect on January 1, 2018.

² While it is beyond the scope of this letter to address potential violations of SB 9 itself, Government Code section 65852.21, subdivision (b)(2)(A), seems to contemplate units that are “at least 800 square feet in floor area,” not limited to a maximum of 800 square feet, as required by the Ordinance.

coverage standard, it is possible to see how the new standard represents a reduction in residential development capacity. This section examines only the maximum lot coverage standard in order to provide a comparison; other development standards could also serve for this purpose.

Table 9-1G-3 (R-1 Zone District Residential Development Standards) provides that the maximum lot coverage shall be calculated according to the following formula: $(.275 \times \text{lot area}) + 1,125$ square feet. The resulting figure represents the maximum amount of ground level residential floor area that a development can have. Lots with existing development (e.g., a single-family home) can receive additional floor area by constructing additions or by constructing new structures until the maximum lot coverage limit is reached. Vacant lots are subject to the same maximum lot coverage limit as already developed lots. HCD is particularly concerned by scenarios under which the Ordinance will prevent a property owner from developing its lot to the extent permitted under the previously existing development standards.

For example, a typical 7,200 square-foot lot in the R-1 zone is generally able to be developed with a house approximately 3,000 square feet in size. Were the same size lot developed with “urban dwellings” pursuant to the City’s SB 9 implementation Ordinance, the size of each home would be limited to 800 square feet. This represents a reduction in floor area of approximately 75 percent if one urban dwelling were constructed and approximately 50 percent if two urban dwellings were constructed. As demonstrated here, the Ordinance’s 800 square-foot maximum unit size reduces the site’s residential development capacity dramatically in certain instances. One potential remedy to this situation would be to impose the same suite of floor area-related development standards to lots with SB 9 units as to lots with one single-family dwelling.

Development Standard 2: Height Limit: The Ordinance limits the maximum height of a new attached or detached dwelling built under SB 9 to one story and 18 feet (TCMC 9-1T-21.A.4.f). The development standards of the R-1 Zone District currently limit building heights depending on the lot characteristics. Lots wider than 75 feet allow one-story or two-story dwellings up to 32 feet in height. Lots narrower than 75 feet allow one-story or two-story dwellings up to 28 feet in height. On flag lots, uniquely shaped lots, or lots with less than 35 feet of street frontage, the building height is limited to one story and 18 feet. The Ordinance would impose the smallest, one-story, and 18-foot height limitation on all units built under SB 9 regardless of the size or other characteristics of the lot. This limitation, to the extent it prevents development of equivalent floor area compared to that allowed under the existing development standards as described above, reduces the intensity of land use and represents a reduction in residential development capacity.

Development Standard 3: Courtyards: The Ordinance requires that all new detached dwellings built under SB 9 provide an open space courtyard with a minimum area of 1,000 square feet or ten percent of the lot area and with a minimum width and depth of 20 feet,

whichever is larger (TCMC 9-1T-21.A.6.m). The development standards of the R-1 Zone District currently impose no such requirement on other dwellings. As a point of comparison, in the higher density R-2 Zone District, a courtyard is required only for sites proposing more than two units and having a lot width of 50 feet or more. As with the height standard discussed above, imposing a courtyard requirement in the R-1 Zone District creates a reduction in residential development capacity if it prevents development of equivalent floor area compared to that allowed under the existing development standards.

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

Housing elements are required to contain 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).) Therefore, the City should be aware that HCD will examine the City's SB 9 implementation Ordinance in the context of the commitments made in the City's forthcoming draft 6th Cycle Housing Element.

In addition to Development Standards 1-3 discussed above, the following provisions of the Ordinance appear to create governmental constraints on the development of housing that would reduce the economic feasibility of projects.

Parking Requirements: The Ordinance prohibits a property owner from constructing off-street parking spaces that would serve the residents of an SB 9 unit (TCMC 9-1T-21.A.4.j; 9-1T-21.11.f). Additionally, the property owner must remove existing driveways and driveway aprons that might facilitate off-street parking. The development standards of the R-1 Zone District currently impose no such prohibition on the creation of additional off-street parking spaces beyond the two-space-per-dwelling minimum provided they meet the requirements of subsection G (Vehicle Parking and Driveways) of the R-1 Zone District development standards. These requirements impose a new burden on property owners seeking to develop housing under SB 9—a burden which is not borne by any other property owner in the R-1 Zone District. Coupled with the Ordinance's prohibition on the issuance of on-street overnight parking permits to residents of SB 9 units (TCMC 3-3A-23.B.1.i), these requirements likely represent a governmental constraint on the development of housing.

Additionally, these requirements raise concerns related to AFFH and housing discrimination. Materials reviewed by HCD indicate that the City did not perform an analysis to demonstrate that, within the R-1 Zone District in Temple City, households with protected characteristics that do not have a personal vehicle can access resources in a manner equivalent to households

that do have a personal vehicle.³ If the City is concerned with environmental impacts associated with personal automobile use, a more defensible policy may be to make off-street parking and on-street parking permits optional for SB 9 units and their residents while encouraging active transportation and transit use. Policies that encourage these behaviors can include covered and secure bicycle parking, subsidized bus passes, etc.

30-Year Affordable Housing Deed Restriction: The Ordinance requires that all units created under SB 9 be deed-restricted to low- or very low-income households (9-1T-21.A.4.I). While inclusionary zoning requirements are a well-used and important tool for the creation of affordable housing, this requirement is equivalent to a 100 percent inclusionary requirement that is not imposed on any other type of residential development in Temple City. A typical inclusionary requirement is 15 or 20 percent and is applicable to a broad range of residential development. This requirement has the potential to render development of SB 9 units economically infeasible, and as such may constitute a governmental constraint to housing development. As a part of the ongoing housing element update process, the City will need to demonstrate that local development costs and anticipated affordable rents will result in projects that are economically feasible.

Additionally, 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. In certain circumstances, HCD may request the submittal of an economic feasibility study to ensure the ordinance does not unduly constrain housing production. For additional information, see [HCD's Rental Inclusionary Housing Memorandum](#).

LEED Platinum Certification: The Ordinance requires that all new detached dwellings built under SB 9 achieve LEED Platinum certification (TCMC 9-1T-21.A.4.o). While environmental sustainability is a laudable goal, the development standards of the R-1 Zone District currently impose no such requirement on other dwellings. For a building to achieve a LEED Platinum certification, it must provide the very highest level of energy efficiency—far beyond the requirements of the state building code. To achieve this highest-level of sustainable design, specific building design, siting, materials, fixtures, appliances, and heating/cooling systems are required. These additional physical requirements will substantially increase the cost of development of SB 9 units and will therefore likely result in a governmental constraint to the development of housing.

³ This may also raise concerns under [2 CCR § 12060\(a\)](#) regarding practices with a discriminatory effect. Discriminatory effects occur when the policy or practice predictably results in a disparate impact on a group of individuals, or creates, increases, reinforces, or perpetuates segregated housing patterns based on membership in a protected class. See also Anti-Discrimination in Land Use Law (Gov. Code, § 65008) and AFFH (Gov. Code, § 8899.50).

As stated above, housing elements must contain an analysis of governmental constraints on the development of housing for all income levels (Gov. Code, § 65583, subd. (a)(5)) and implement programs to remove those constraints (Gov. Code, § 65583, subd. (c)(3)). The concerns raised above may constitute such constraints.

Subterranean Third Story Requirement: In certain instances, the Ordinance requires that a portion of the floor area of a dwelling built under SB 9 be located underground (TCMC 9-1T-21.A.4.f). Under SB 9, when a local agency's development standards would physically preclude the construction of up to two residential units at least 800 square feet in size, the local agency is required to modify or waive one or more development standards to accommodate a development of that size. (Gov. Code, §§ 65852.21, subd. (b); 66411.7, subd. (c).) Anticipating that in some cases SB 9 units may need to be built as three-story dwellings to meet this statutory requirement, the City appears to have included this undergrounding requirement. In no other instance is a dwelling in the R-1 Zone District required to build habitable floor area that is otherwise consistent with other development standards such as maximum floor area, FAR, etc., as underground living space. This requirement could substantially increase the cost of development of some SB 9 units and may result in a governmental constraint to the development of housing.

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

SB 9 and State 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. After reviewing the City's Ordinance to verify consistency with State ADU Law, the following concern was noted.

Accessory Dwelling Units – No Lot Split: The Ordinance establishes a limit of two residential units on each lot developed under SB 9 and requires that ADUs and Junior ADUs (JADUs) count toward that limit (TCMC 9-1T-21.A.4.b). As written, this limitation applies to situations in which a lot split is proposed as well as to situations when a lot split is not proposed. This inaccurately implements SB 9 and denies property owners the right to develop ADU(s) consistent with State ADU Law. (Gov. Code, §§ 65852.2; 65852.22.) The provisions of SB 9 that allow a local agency to impose a limit of two residential units specifies that ADUs/JADUs are to be counted towards that limit only in instances when a lot split is proposed. (Gov. Code, § 66411.7, subd. (j)(1).) In instances when a lot split is not proposed, these limitations do not apply and the local agency must allow ADUs as it typically would pursuant to State ADU Law. (Gov. Code, § 65852.21, subd. (f).)

Conclusion

Separately and collectively, these development standards and other requirements reduce the intensity of land use, raising concerns under the HCA. They also raise concerns under State Housing Element Law, State ADU Law, AFFH, and Anti-Discrimination in Land Use Law. The implementation of these policies will almost certainly have a chilling effect on the production of housing under SB 9 by rendering projects economically infeasible. 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).)

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

Sincerely,

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

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

cc: Brian Cooke, City Manager
Greg Murphy, City Attorney