



April 9, 2024

VIA E-MAIL

Krishna Penollar, Project Planner
Community Development Department
500 Castro Street
Mountain View, CA 94039

Re: 294-296 Tyrella Avenue Builder's Remedy Project
Yes In My Back Yard Comment Letter

Dear Ms. Penollar:

YIMBY Law is a 501(c)3 non-profit corporation, whose mission is to increase the accessibility and affordability of housing in California. YIMBY Law pursues this mission through the enforcement of state housing laws, including the Housing Accountability Act ("HAA" or Gov. Code § 65589.5). As you know, subdivision (d)(5) of the HAA states that if a city or county does not have a "substantially compliant" Housing Element, that jurisdiction cannot utilize its zoning or general plan standards to disapprove a housing project that reserves 20% of its units affordable to lower income households. In other words, cities that fail to pass a compliant housing element by their deadline lose local control over housing development. This is known as the Builder's Remedy.

The City of Mountain View failed to adopt a substantially compliant Housing Element by the statutory deadline, and a preliminary application for an 85-unit housing development project with 20% low-income units at 294-296 Tyrella Avenue was submitted while the City was out of compliance. The submittal of a preliminary application ensures that the Builder's Remedy applies to the project throughout the entire entitlement process.¹ YIMBY Law understands that the City is attempting to execute an end run around the Builder's Remedy by enforcing its zoning through conditions of approval. We are writing to inform you that the City's actions are inconsistent with the Builder's Remedy and violate the HAA.

The City is taking the position that subdivision (f)(1) allows the City to enforce its zoning and general plan through conditions of approval. First, we note that subdivision (f)(1) is simply a general interpretive proviso and does not provide the City with substantive authority that overrides the

¹ See HCD Letter of Technical Assistance issued to Santa Monica, dated October 5, 2023, available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/santa-monica-TA-100522.pdf>.

Builder's Remedy. Subdivision (d)(5) clearly eliminates a local government's authority to impose its zoning and general plan standards when the jurisdiction is out of compliance with the Housing Element Law.

Moreover, the City is entirely focused on the first half of the first sentence of subdivision (f)(1), completely ignoring the rest. Subdivision (f)(1) says that the HAA should not be interpreted to prohibit a local agency from requiring compliance "with objective, quantifiable, written development standards, conditions, and policies *appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584.*"

Subdivision (f)(1) merely references compliance with standards that are appropriate to and consistent with meeting a jurisdiction's RHNA – i.e. the "appropriate zoning and development standards" to accommodate RHNA that are identified in a local government's certified Housing Element. (Gov. Code § 65583(c)(1).) Said another way, a local government that does not have a certified Housing Element to accommodate its RHNA does not have *any* standards appropriate to and consistent with meeting its RHNA requirements. In short, a local government that does not have a certified Housing Element cannot rely on subdivision (f)(1) at all because the Housing Element process is how a local government identifies standards appropriate to and consistent with meeting RHNA.

Regardless, subdivision (f)(1) also states that any condition of approval must "be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development." This clearly demonstrates that the purpose of subdivision (f)(1) is to *assist* the project is getting built, not as a roadblock to the development of affordable housing as the City is attempting here.

The City has also argued that any zoning standard that is not codified within the chapter of the City Code titled "Zoning Ordinance" is outside the scope of the Builder's Remedy. The City cannot evade the HAA simply by moving zoning standards into a different chapter of the City Code. Under state law, zoning ordinances are defined broadly to include any standard that regulates the location, height, bulk, number of stories, and size of buildings and structures; the size and use of lots, yards, courts, and other open spaces; the percentage of a lot which may be occupied by a building or structure; the intensity of land use; offstreet parking and loading requirements; building setback lines; and inclusionary housing requirements. (Gov. Code § 65850.) The Builder's Remedy applies to *any* City ordinance that fits within the broad state law definition of a zoning ordinance.

The HAA provides additional provisions to prevent a jurisdiction attempting to prevent the development of housing through conditions of approval. A local government is also prohibited from imposing *any* condition that would have "a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households." (Gov. Code §

65589.5(i).) YIMBY Law reminds the City that the HAA squarely places the burden of proof on the City to demonstrate that it has complied with the HAA's requirements. (Gov. Code § 65589.6.) In other words, the applicant does not have to demonstrate that a condition of approval has a substantial adverse effect on the project, the burden is on the *City* to demonstrate that its conditions comply with this requirement.

The City's own analysis found that its BMR program, park land dedication requirements, TDM measures, and parking requirements all pose significant constraints on the development of housing.² Despite this admission, the City is now attempting to circumvent the HAA by imposing these constraints on an affordable housing project as conditions of approval. Even if the Builder's Remedy did not apply and the City were authorized to impose its zoning, which it is not, these conditions of approval *still* violate the HAA because the City admits they have a substantial adverse effect on the viability and affordability of housing.

The proposed project at 294-296 Tyrella Avenue provides desperately needed affordable housing in a community where skyrocketing housing costs have made housing unattainable except for the wealthiest individuals. We respectfully request that the City process the project consistent with the state law, and approve the project as submitted without the proposed unlawful conditions of approval. If the City fails to do so, YIMBY Law reserves the right to pursue litigation against the City to enforce state housing laws.

Best,



Sonja Trauss
Executive Director
YIMBY Law

Cc:

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YIMBY Law attorney, Brian O'Neill, brian@pattersononeill.com

² Mountain View 6th Cycle Housing Element, Appendix D: Constraints Analysis, p. 245.

