

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

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July 11, 2023

City of Santa Ana
Mayor Valerie Amezcua, Mayor Pro Tem Jessie Lopez, and Councilmembers
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, CA 92702

Dear Mayor Valerie Amezcua, Mayor Pro Tem Jessie Lopez, and Councilmembers
Thai Viet Phan, Benjamin Vazquez, Phill Bacerra, Johnathan Ryan Hernandez, and
David Penaloza:

**RE: Assembly Bill 129 Amendments to Assembly Bill 2011 Parcel Exemptions
– Follow-Up Letter of Technical Assistance**

The California Department of Housing and Community Development (HCD) writes to notify the City of Santa Ana (City), and its City Council, that on July 10, 2023, Assembly Bill (AB) 129 became effective, amending the parcel exemption requirements in AB 2011, codified in Government Code sections 65912.114, subdivision (i), and 65912.124, subdivision (i). These legislative changes clarify the intent of the statute and reinforce the conclusions provided in the initial Letter of Technical Assistance provided by HCD to the City on June 19, 2023 (attached and incorporated by reference).

As stated in HCD's initial Letter of Technical Assistance, the City's efforts to promote housing production, though laudable, do not excuse the City from complying with state laws. The City will be in violation of the aforementioned statutes, and other related provisions codifying AB 2011 and AB 129, if the City Council proceeds with final adoption of the resolution and ordinance. If the City chooses to move forward, HCD urges the City to first correct the issues identified in the June 19, 2023 Letter of Technical Assistance and comply with the requirements in AB 2011 as amended by AB 129. To that end, the purpose of this letter is to provide further technical assistance regarding the City's compliance with state law.

Background

AB 2011, the Affordable Housing and High Road Jobs Act of 2022, is codified at Government Code Title 7, Division 1, Chapter 4.1 (commencing with Section 65912.100) and became effective July 1, 2023. This law creates a new opportunity for by-right streamlined development of multi-family residential projects compliant with a set of eligibility requirements for affordable and mixed-income projects. HCD has authority to enforce AB 2011 pursuant to Government Code section 65585, subdivision (j)(13).

At the urging of the Attorney General, the City Council postponed a May 16, 2023 hearing on the resolution to exempt parcels from AB 2011 to June 20, 2023. Since then, HCD reviewed the resolution and met with City staff numerous times to discuss the City's proposed parcel exemptions and provide technical assistance regarding implementation of the exemption provisions in AB 2011. HCD's efforts culminated in a June 19, 2023 Letter of Technical Assistance. That letter details the meetings and communication between HCD and the City, and notes that the City's findings for exemptions from AB 2011 were inadequate.

Subsequently, on or just prior to June 20, 2023, the City Council agenda modified the action item on the adoption of the proposed resolution, and instead amended its action item to recommend the City Council approve an urgency ordinance and a first reading of a proposed ordinance that would exempt 502 parcels (11,295 potential units)¹ from affordable housing developments (Gov. Code, § 65912.114, subd. (i)) and 304 parcels (17,664 potential units)² from mixed-income housing development (Gov. Code, § 65912.124, subd. (i)). On June 20, 2023, the City Council approved that action item. In doing so, the City did not address the inadequate findings noted in HCD's initial Letter of Technical Assistance.

Compliance with AB 2011 and AB 129

Pursuant to Government Code sections 65912.114, subdivision (i), and 65912.124, subdivision (i), "[a] local government may, by ordinance ... exempt a parcel from [AB 2011] before a development proponent submits a development application on a parcel pursuant to [AB 2011] if the local government makes written findings...." This exemption allows local governments the opportunity to direct newly created residential density on AB 2011 parcels to alternative compliant parcels within the local government's jurisdiction.

Required Findings

The affordable housing exemption (Gov. Code, § 65912.114, subd. (i)) and the mixed-income housing exemption (Gov. Code, § 65912.124, subd. (i)) require a different set of criteria for establishing parcel eligibility and allowable density. The City's written findings must specifically demonstrate compliance with all requirements for each exemption. This requires a level of detail and specificity that discusses the City's compliance with each requirement. Any attachments should function as supplemental support for the written findings.

¹ The City of Santa Ana City Council Agenda Package Item 32, page 32-34, dated June 20, 2023.

² Ibid. at page 32-46.

No Net Loss Requirement

AB 129 clarifies that the baseline residential capacity that a local government must use to determine whether the exemption's no net loss requirement has been met is inclusive of the combined effect of "local and state law as of the date of the adoption of the [implementing] ordinance" (Gov. Code §§ 65912.114, subd. (i)(3)(A), and 65912.124, subd. (i)(3)(A)) and "[AB 2011] and local law as of the date of the adoption of the [implementing] ordinance" (Gov. Code §§ 65912.114, subd. (i)(3)(B), and 65912.124, subd. (i)(3)(B)).

As amended by AB 129, the AB 2011 parcel exemption allows for two options for compliance with this requirement, as described in Government Code sections 65912.114, subdivision (i)(2), and 65912.124, subdivision (i)(2):

1. "[T]he implementing ordinance authorizes" alternative parcels to be developed under AB 2011 that "would not otherwise be eligible for development pursuant to [AB 2011]" (Gov. Code, §§ 65912.114, subd. (i)(2)(A), and 65912.124, subd. (i)(2)(A)), thereby creating additional potential residential capacity in the jurisdiction. The alternative parcels must be "suitable for residential development," as defined in Government Code section 65583.2.
2. "[T]he implementing ordinance authorizes" alternative parcels eligible for development under AB 2011 to be developed ministerially at higher residential density than what is required under AB 2011 (Gov. Code, §§ 65912.114, subd. (i)(2)(B), and 65912.124, subd. (i)(2)(B)), thereby creating additional potential residential capacity. The mixed-income exemption also imposes certain restrictions on height limits (Gov. Code, § 65912.123, subd. (c)).

The alternative parcel or parcels create new potential residential capacity that can offset the loss of residential capacity resulting from the exemptions. The no net loss of total potential residential capacity is demonstrated when the total potential residential capacity of the alternative parcels equals or exceeds the total potential residential capacity of the exempted parcels.

As stated in the June 19, 2023 Letter of Technical Assistance, the additional capacity created solely by the alternative parcels that were not previously eligible under AB 2011 does not appear to be enough to offset the loss of residential capacity resulting from the exemptions. For the affordable requirement, the difference appears to be several thousand units, while for the mixed-income requirement, the difference appears to be fewer than 1,000 units. To close these gaps, the City must either identify more parcels that are not currently subject to AB 2011 or upzone parcels that are eligible under AB 2011 to allow greater capacity than currently permitted.

Development of Alternative Parcel or Parcels

AB 129 also clarifies the relationship between local initiatives and state law. The ministerial development of the alternative parcels pursuant to AB 2011 “[preempts] any contrary provision of the local government’s charter, general plan, or ordinances” (Gov. Code §§ 65912.114, subd. (i)(4), and 65912.124, subd. (i)(4)). This provision allows local government to direct growth in the jurisdiction while ensuring compliance with the no net loss requirements pursuant to Government Code sections 65912.114, subdivision (i)(3), and 65912.124, subdivision (i)(3).

Conclusion

HCD remains committed to supporting the City in achieving compliance with the statutory requirements in AB 2011. The resolution and ordinance in its current form is inconsistent with AB 2011. The City can correct the issues identified in this letter and the June 19, 2023 Letter of Technical Assistance through adequate written findings that fully comply with the exemption requirements in AB 2011 and clarified by AB 129.

HCD would like to remind the City that HCD has enforcement authority over AB 2011, 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 city’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)). If you have questions or would like to discuss the content of this letter, please contact Gabriel A. Pena-Lora, of our staff, at gabriel.pena-lora@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: Minh Thai, Executive Director, Planning and Building Agency, City of Santa Ana
Ricardo Soto, Principal Planner, Planning and Building Agency, City of Santa Ana