

## Jomsky, Mark

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**From:** Richard McDonald .....>  
**Sent:** Friday, February 4, 2022 5:01 PM  
**To:** PublicComment-AutoResponse  
**Cc:** Jomsky, Mark; Rafa Sonnenfeld  
**Subject:** February 7, 2022 CC Agenda Item 8 -- HCD Letter of Inquiry  
**Attachments:** Pasadena\_LetterOfInquiry011222.pdf

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Attached is a Letter of Inquiry from the State regarding the City's actions associated with the Lincoln Avenue Specific Plan update, which we understand is set for First Reading on Monday night. We understand the City has not responded to it, nor sought the HCD's approval of the proposed Ordinance as required under Government Code 66300. We thus recommend deferring the reading until the City has done so.

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02/07/2022  
Item 8

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

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)

2022 FEB -7 AM 9: 08

CITY CLERK  
CITY OF PASADENA

January 12, 2022

David Reyes  
City of Pasadena  
Director of Planning and Community Development  
100 North Garfield Avenue  
Pasadena, CA 91101

Dear David Reyes:

**RE: City of Pasadena – Housing Crisis Act, Letter of Inquiry**

The purpose of this letter is to inquire into the City of Pasadena's (City) recent amendments to its Lincoln Avenue Specific Plan (LASP) and the consistency of that action with the Housing Crisis Act of 2019 (Gov. Code, § 66300). The California Department of Housing and Community Development (HCD) received a complaint in the fall of 2021 in which concerns were raised that certain proposed actions, particularly those involving amendments to the General Plan related to the LASP, may violate state law. HCD staff subsequently reviewed publicly available materials (e.g., City staff reports, resolutions, etc.) and met with both the complainant and City staff. However, neither the written materials reviewed by HCD nor the content of the conversations held between HCD and City staff articulate in sufficient detail the consistency of the City's actions with state law. This letter identifies three specific City actions associated with the LASP update and poses questions intended to illuminate the City's process.

**Housing Crisis Act of 2019 - Reductions in Intensity (Gov. Code, § 66300)**

The Housing Crisis Act of 2019 (HCA) limits the ability of a local agency to reduce residential densities in one geographical area (i.e., "to downzone") without concurrently increasing residential densities elsewhere (i.e., "to upzone"). (Gov. Code, § 66300, subd. (b)(1)(A).) This provision is intended to ensure that no overall net loss of development capacity will occur during the housing crisis. Additionally, this same provision limits the ability of a local agency to add or modify development standards (e.g., building heights, setbacks, etc.) where doing so would have the practical effect of reducing residential development capacity. 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).)

### **Topic 1: Change in Land Use Designation from Medium Mixed Use to Low Mixed Use**

Conversations between HCD and City staff have centered on the increase in residential density associated with the upzoning of this portion of the LASP from LASP-CL (Limited Commercial) to LA-MU-N (Mixed-Use) in the area between the 1-210 Freeway and Pepper Street on the westside of Lincoln Avenue. This change has resulted in an increase in residential density from 16 dwelling units per acre to 32 dwelling units per acre. However, the underlying General Plan Land Use Designation was changed from Medium Mixed Use to Low Mixed Use. This represents a reduction in both the maximum allowable floor area ratios (FAR) and residential densities from 0-2.25 FAR and 0-87 du/ac to 0-1.0 FAR and 32 du/ac. HCD understands and recognizes that the density and intensity standards contained in the Specific Plan (and as integrated into the Zoning Code) are those to which future development must conform, but a question remains as to how this reduction in General Plan density and intensity comports with the HCA.

Please explain why the City believes that this change in General Plan Land Use Designation is consistent with and does not violate the HCA.

### **Topic 2: Modifications to Development Standards**

As shown in Attachment B (Comparison Table of Current and Recommended Standards) to the November 15, 2021 City Council Agenda Report, several modifications to the development standards of the LA-MU-N Zone district were adopted. Some changes represent an increase in the intensity of development, such as increases in FAR and reductions in off-street parking requirements. Other changes appear to have resulted in a reduction in the intensity of the residential uses. In particular, the following examples are concerning:

**Street Setbacks.** Street setbacks have increased from 1.5-5 feet to 5-10 feet.

**Rear Setbacks.** Rear setbacks are smaller for ground floor residential uses than for ground floor commercial uses. Given that LA-MU-N is a mixed-use zone located adjacent to a commercial corridor, it seems probable that vertical mixed-use developments will be proposed. If this were to occur, it appears that residential upper floors will be constrained by the smaller footprint of the commercial ground floor.

**Open Space.** Open space requirements increased from 150 square feet per unit to 200-275 square feet per unit depending on the number of bedrooms.

As described above, new development standards that would have the practical effect of reducing residential development capacity may violate the HCA. (Gov. Code, § 66300, subd. (b)(1)(A).) Please explain the methodology used by the City to verify that these and other changes are consistent with and do not violate the HCA.

### **Housing Crisis Act of 2019 - Development Caps (Gov. Code, § 66300)**

The HCA contains provisions that limit the ability of a local agency to impose a cap on the number of residential units that can be built in a certain area or within a certain time frame. Specifically, the law prevents a local agency from establishing or implementing a policy that does any of the following:

- (i) Limits the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the affected county or affected city, as applicable.
- (ii) Acts as a cap on the number of housing units that can be approved or constructed either annually or for some other time period.
- (iii) Limits the population of the affected county or affected city, as applicable.

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

### **Topic 3: Development Cap Program**

Since at least 2004, the City appears to have maintained a Development Cap program associated with each of the eight specific plan areas. Each specific plan area is limited to a maximum number of residential units that can be approved. Notably, these development caps do not apply to deed-restricted affordable units except for the Fair Oaks/Orange Grove Specific Plan.

Please explain why the City believes that its Development Cap program does not violate the HCA's limits on implementing development caps. Is the City currently implementing and enforcing its Development Cap program?

**Conclusion**

HCD looks forward to hearing from the City and assisting the City in its compliance with the State's housing laws. HCD would like to remind the City that with the passing of AB 215 (Chapter 342, Statutes of 2021), HCD gained enforcement authority over the Housing Crisis Act of 2019. Accordingly, HCD may review local government actions and inactions to determine consistency with that state law. If HCD finds that a city's actions do not substantially 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).)

Thank you for your prompt attention to this matter. If you have questions or need additional information, please contact Brian Heaton, of our staff, at [Brian.Heaton@hcd.ca.gov](mailto:Brian.Heaton@hcd.ca.gov).

Sincerely,

A handwritten signature in black 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

## Iraheta, Alba

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**From:** Rafa Sonnenfeld <  
**Sent:** Friday, February 4, 2022 5:40 PM  
**To:** Richard McDonald  
**Cc:** PublicComment-AutoResponse; Jomsky, Mark  
**Subject:** Re: February 7, 2022 CC Agenda Item 8 -- HCD Letter of Inquiry

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Good Evening,

My organization, YIMBY Law, has also objected to this illegal ordinance. It would be foolhardy for the city of Pasadena to pursue adoption of a policy which is in clear violation of the No net loss provisions of the housing crisis act of 2019 (SB-330).

We previously objected to this proposed ordinance at a prior hearing, but the city has failed to remedy the law violations we outlined, nor has it addressed any of the concerns noted by HCD.

Please be advised that YIMBY Law is a 501(c)(3) whose mission is to promote housing affordability and accessibility in California. We sue cities who violate state housing laws, including SB-330. We currently have several active lawsuits against cities for similar violations of the law, and would not hesitate to pursue this matter in court. HCD also has enforcement authority over this matter, and may refer this case to the Attorney General for resolution should the city continue to proceed with passing this ordinance.

Sincerely,

Rafa Sonnenfeld  
Director of Legal Advocacy  
YIMBY Law

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Richard A. McDonald, Esq.

Law Office of Richard A. McDonald

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**Rafa Sonnenfeld** he/him  
Director of Legal Advocacy



**YIMBY  
LAW**