

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

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February 11, 2022

David Carmany, City Manager  
City of West Covina  
1444 W Garvey Ave  
West Covina, CA 91790

Dear David Carmany:

**RE: Review of West Covina's Accessory Dwelling Unit (ADU) Ordinance under  
State ADU Law (Gov. Code, § 65852.2)**

Thank you for submitting the City of West Covina's (City) accessory dwelling unit (ADU) ordinance No. 2480 ("the Ordinance") adopted April 20, 2021, to the California Department of Housing and Community Development (HCD). HCD has reviewed the Ordinance and is submitting these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD has determined that the Ordinance does not comply with section 65852.2 in the manner noted below. Under the statute, the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than March 14, 2022.

The adopted ADU ordinance addresses many statutory requirements; however, HCD finds that the ordinance does not comply with State ADU Law in the following respects:

- Pg. 4, Section 26-685.33 (3)(b)(ii) – Converted Setbacks – The Ordinance permits detached accessory dwelling units on lots with existing multifamily residential buildings and requires that "each such unit... meets rear-yard setbacks of four feet." However, Government Code section 65852.2, subdivision (a)(1)(D)(vii), states: "No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit when created within an existing structure." Therefore, ADUs created from a converted structure are not subject to setback requirements. The City should note this exemption for converted units.
- Pg. 4, Section 26-685.33 (3)(b)(ii) – Maximum Area – The Ordinance states that for "more than two (2) detached accessory dwelling units... the maximum square footage of detached accessory dwellings on lots with existing multifamily residential buildings shall be limited to 1,200 square feet of living area." Government Code section 65852.2, subdivision (c)(2), states that a local agency shall not establish a maximum square footage requirement for each detached

ADU that is less than 850 square feet or 1,000 square feet for an ADU that provides more than one bedroom. The City should amend the Ordinance to clarify that the square footage limitation applies to each ADU, not to the combined maximum size of the two detached ADUs.

- Pg. 6, Section 26-685.33 (7) – Siting – The Ordinance states that detached ADUs may not be located “within the area between the front property line and the line parallel to, and touching, the back of the primary residence.” This would relegate the detached ADUs to the rear of the primary residence. Government Code section 65852.150, subdivision (b), requires that “provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units....” HCD has determined that this siting requirement is impermissibly burdensome, because it would prohibit the construction of ADUs along the sides of the primary dwelling, thus making it difficult to develop ADUs in shallow lots with small rear yards. In addition, local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d) do not apply to ADUs created under Government Code section 65852.2, subdivision (e). ADUs that meet the criteria under subdivision (e) must be ministerially approved. Therefore, local standards such as this siting requirement may not preclude the construction of an 800 square-foot unit with four-foot setbacks and a height limit of 16 feet even if the ADU was constructed along the side of the primary dwelling. The City should remove this section to comply with State ADU Law.
- Pg. 6, Section 26-685.33 (9) – Separate Sale – The Ordinance prohibits separate sale of an ADU from the primary residence. However, Government Code section 65852.26, subdivision (a)(1), creates a narrow exception to allow separate conveyance with the involvement of qualified nonprofit housing organizations. The City should refer to the statute to allow for such an exception.
- Pg. 7, Section 26-685.33 (11)(b)(ii) – Design requirements for new units – The Ordinance requires that “exterior staircases serving second-floor accessory dwelling units shall not be located in between the property line and the existing building.” Under Government Code section 65852.150, subdivision (b), such a prohibition is considered burdensome, because the requirement as written would make it impossible to create a compliant exterior staircase. Any exterior staircase would necessarily be built between the property line and the existing building. Where an exterior staircase serving a second story ADU is a necessary component for ingress and egress, the City may not preclude its construction. In addition, local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created under Government Code section 65852.2, subdivision (e)(1)(A)(i). Rather, a second story ADU constructed within a proposed or existing single-family dwelling must be ministerially approved. An ADU constructed pursuant to

subdivision (e)(1)(A)(i) "...may include an expansion of not more than 150 square feet beyond the physical dimensions of the existing accessory structure... [which] shall be limited to accommodating ingress and egress." The construction of an exterior staircase for a second story ADU would fall under this accommodation. Therefore, the City should remove this requirement to comply with State ADU Law.

In these respects, revisions are necessary to comply with statute.

HCD will consider any written response to these findings, such as a revised ordinance or a detailed plan to bring the ordinance into compliance with law by a date certain, before taking further action authorized pursuant to Government Code section 65852.2. Please note that HCD may notify the Attorney General's Office in the event that the City fails to take appropriate and timely action under section 65852.2, subdivision (h).

HCD appreciates the City's efforts in the preparation and adoption of the ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please contact Mike Van Gorder, of our staff, at (916) 776-7541 or at [mike.vangorder@hcd.ca.gov](mailto:mike.vangorder@hcd.ca.gov) if you have any questions or would like HCD's technical assistance in these matters.

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