

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

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August 9, 2021

Cheri L. Flores, Planning Manager
City of La Quinta
78495 Calle Tampico
La Quinta, CA 92253

Dear Cheri Flores:

RE: Review of the City of La Quinta's Municipal Code Amendment for Accessory Dwelling Units (ADUs) (Section 9.60.090)

Thank you for submitting the City of La Quinta's (City's) municipal code amendment, Ordinance No. 588, adopted February 2, 2021. The ordinance was received by the California Department of Housing and Community Development (HCD) on June 21, 2021. HCD is submitting these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD finds that Municipal Code section 9.06.090, for ADUs, does not comply with Government Code section 65852.2 in several respects, noted below. HCD requests that the City provide a written response to these findings no later than September 8, 2021. HCD will review and consider any written response received from the City before that date in advance of taking further action authorized by Government Code section 65852.2.

The adopted ordinance addressing ADUs meets many statutory requirements. However, Municipal Code section 9.60.090 must be revised to comply with State ADU Law as follows:

- *A. Purpose:* Although this section indicates that its purpose is to establish standards for ADUs and Junior Accessory Dwelling Units (JADUs), it fails to reference Government Code section 65852.22, which addresses the State's standards for JADUs. In addition, this section limits the zones that allow ADUs to specific residential zones. Pursuant to Government Code section 65852.2, subdivision (a)(1), ADUs are allowed in areas zoned to allow single-family or multifamily residential use. Thus, the local ordinance is narrow as to the permissible location of ADUs and must be revised to allow ADUs in all areas or zones that allow single-family or multifamily residential use. Finally, the section is silent as to the permissible areas for JADUs. Pursuant to Government Code section 65852.22, subdivision (a), JADUs are allowed in single-family residential zones. This section should be amended to conform to State law requirements.

- *B.3. Definitions:* The ordinance defines “primary residence” as a single-family dwelling. For the purposes of State ADU Law, a primary dwelling may be either a single-family or multifamily dwelling structure. (Gov. Code, § 65852.2, subd. (a).) This section of the ordinance should be amended to clarify a primary dwelling unit may be a multifamily dwelling.
- *B.4. Definitions:* The ordinance’s definition of “public transit” is limiting and incomplete as defined by State ADU Law. Pursuant to revisions effective January 1, 2020, “public transit” means a location, including but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes and are available to the public. (Gov. Code, § 65852.2, subd. (j)(9).) Public transit within the meaning of ADU law is not restricted to the narrow definition set out in Public Resources Code section 21155. The ordinance must be revised to reflect the meaning of “public transit” as noted in State ADU Law.
- *C.1. Standards for ADUs:* The ordinance requires ADUs to comply with provisions of the applicable zoning district in which it is constructed; to the extent that this conflicts with State ADU Law, this is not permissible. The standards contained in State ADU Law prevail over the provisions contained in local zoning codes and development standards, including but not limited to setbacks, heights, allowed sizes, elimination of lot size constraints, location, parking requirements and exemptions and fees. (Gov. Code, § 65852.2.) State ADU Law sets out the permissible range of standards that may be applied to an ADU. (Gov. Code, § 65852.2, subd. (a)(6).) No additional standards, other than those provided in this subdivision, shall be used or imposed. HCD has not undertaken a survey of the provisions in the City’s code that may be excessive. The City ought to undertake such a survey and revise the ordinance accordingly.
- *C.2. Conformance with zoning requirements:* The ordinance prohibits the creation of an ADU on a lot in which the primary residence or any other structure does not comply with all minimum requirements of the applicable zoning code. State ADU Law requires that a local agency shall not require, as a condition for ministerial approval of a permit application for an ADU or JADU, the correction of nonconforming zoning conditions. (Gov. Code, § 65852.2, subd. (e)(2).) The ordinance must be revised to eliminate this constraint or prohibition of the creation of an ADU or JADU.
- *C.6. Maximum size of an attached ADU:* The ordinance limits the size of an ADU that is created as an addition to an existing primary dwelling to no more than 50 percent of the existing square footage. While in many instances this may be permissible, under State ADU Law, ADUs shall not be limited in size to less than 800 square feet. (Gov. Code, § 65852.2, subd. (c)(2)(C).) The City’s restrictions would present a problem for primary dwellings less than 1,600 square feet. In other words, where the size of the primary dwelling is less than 1,600 square feet, the ADU would be limited to a size of less than 800 square feet under the City’s rule. The ordinance should be revised to eliminate this size constraint.

- *C.7. Minimum size:* The ordinance requires the minimum gross floor area of an ADU to be 400 square feet, except for efficiency units. This limit would effectively prohibit a number of ADUs that must be permitted under State ADU Law. In particular, this limitation may not be applied to ADUs created within the space of an existing structure, such as within an attached or detached garage or barn (Gov. Code, § 65852.2, subd. (e)(1)(A)(i)) or to manufactured houses. The minimum size requirements in the ordinance should be revised to comply with State ADU Law and the Health and Safety Code.
- *C.8. Maximum size of a detached ADU:* The ordinance limits the size of a detached ADU to 1,200 square feet. Although the size of a new ADU may be limited, the conversion of an existing structure, or a portion of an existing structure, to an ADU may not be subject to size requirements. (Gov. Code, § 65852.2, subd. (e)(1)(A).) The ordinance should be revised to comply with State ADU Law in this respect.
- *C.9. Limitation on the number of bedrooms:* The ordinance limits ADUs to no more than two bedrooms. A limit on the number of bedrooms could be construed as a discriminatory practice towards protected classes, such as familial status, and would be considered a constraint on the development of ADUs. This condition also exceeds the standards contained in State ADU Law (Gov. Code, § 65852.150 and 65852.2). Therefore, the ordinance should be revised to remove this constraint. The City can impose the requirements of the building code.
- *C.10. Architectural compatibility disputes:* The ordinance allows for the resolution of architectural compatibility disputes. Although local agencies may establish provisions for architectural review, ADU and JADU applications shall be considered and approved ministerially without discretionary review or a hearing. (Gov. Code, § 65852.2, subds. (a)(1)(B)(i) and (a)(3).) Thus, applicable architectural standards should be clear and objective. The ordinance should be revised to conform with State ADU Law.
- *C.11. Height limitations:* The ordinance limits the height of an attached ADU to not exceed the height of the primary dwelling. ADU statute restricts local agencies from requiring the height of ADUs, whether attached or detached, to be less than 16 feet. (Gov. Code, § 65852.2, subds. (c)(2)(C) and (e)(1)(B)(ii).) The ordinance should be revised accordingly.
- *C.18. Compliance with Local Codes and Regulations:* Although the ordinance requires ADUs to comply with current codes and zoning regulations, these regulations must comply with and not exceed the standards included in State ADU Law, including but not limited to location, lot size, setbacks, parking, height, and unit size. (Gov. Code, § 65852.2, subd. (a)(6).) The ordinance should be revised to ensure the specific zoning regulations for the creation of ADUs and JADUs are in compliance with State ADU Law.
- *C.21. Fees for ADUs:* The ordinance states that the applicant for an ADU shall pay all applicable fees imposed on new development of an ADU. HCD has not reviewed the

City's fee structure but urges the City to review it for compliance with State ADU Law. In particular, local agencies, special districts, and water corporations may not impose any impact fee for ADUs of less than 750 square feet and shall charge a proportional impact fee for ADUs of 750 square feet or more, based on the size relationship of the ADU and the primary dwelling unit. (Gov. Code, § 65852.2, subd. (f)(3)(A).) Further, ADUs may be exempt or qualify for a reduction of utility fees contingent upon the ADU being of new construction or being created within the space of an existing structure. (Gov. Code, § 65852.2, subds. (f)(4), (f)(5), and (e)(1)(A).) The ordinance should be revised to clarify fee limitations as noted in statute. HCD further requests that the City address its compliance in this respect in any response to HCD.

- *C.22. Additional Conditions by City Manager:* The ordinance allows the City Manager or authorized designee to add other conditions as necessary to preserve conditions in a residential neighborhood. This provision essentially creates a discretionary review process that is not permitted by State ADU Law. Statute allows local agencies to establish development standards with an adopted ADU ordinance. (Gov. Code, § 65852.2, subds. (a)(1)(B)(i) and (a)(4).) The development standards must be set out in the ordinance and cannot be imposed on an ad hoc, discretionary basis by the City Manager. (Gov. Code, § 65852.2, subds. (a)(3)(B)(i) and (a)(4).) The ordinance must be revised to eliminate this provision for both ADUs and JADUs.
- *E.4. JADU Location:* Although the ordinance does note that JADUs shall be located within the walls of the site's single-family residence, please note that the residence also includes an attached garage. (Gov. Code, § 65852.22, subd. (a)(4).)

The date on this letter shall serve as the start of the 30-day period for the local agency to respond to these findings prior to HCD taking any other action authorized pursuant to Government Code section 65852.2, subdivision (h). The City may choose to adopt an ordinance to comply with this section or to be limited to using the development standards established in State statute for the review and approval of ADUs. Please note that failure to comply with Government Code section 65852.2, subdivision (h), may lead to further action, including a referral to the California Attorney General's Office.

HCD appreciates the City's efforts provided in the preparation and adoption of an ADU ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please feel free to contact Greg Nickless, of our staff, at 916-274-6244 or at greg.nickless@hcd.ca.gov.

Sincerely,



Shannan West
Land Use and Planning Unit Chief