

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

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May 21, 2021

Patty Nevins, Planning Official
Community Development Department
City of Moreno Valley
14177 Frederick St.
Moreno Valley, CA 92552

Dear Patty Nevins:

RE: Review of the City of Moreno Valley's Municipal Code for Accessory Dwelling Units (ADUs) (Chapter 9.09.130)

The purpose of this letter is to submit written findings to the City of Moreno Valley related to the City's Municipal Code, specifically Chapter 9.09.130 Accessory Dwelling Units (ADUs). Although the Municipal Code refers to an ordinance adopted in 2018, the California Department of Housing and Community Development (HCD) does not have record of receiving a copy of an adopted ADU ordinance at that time as required by Government Code section 65852.2, subdivision (h)(1). In addition, there have been multiple changes to state ADU law since 2018 which have not been incorporated into the City's municipal code. As explained below, HCD finds that the ordinance does not comply with section 65852.2 in several respects. HCD requests that the City provide a written response to these findings no later than June 18, 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 City's Municipal Code governing ADUs does not comply with state ADU law in the following respects:

- Submittal of an adopted ADU ordinance to HCD: Pursuant to Government Code section 65852.2, subdivision (h), a local agency shall submit a copy of the local agency's adopted ADU ordinance to HCD within 60 days after adoption. After adoption of the ordinance, HCD may submit written findings to the local agency as to whether the ordinance complies with state ADU statute.
- Allowed areas for the creation of ADUs: Although the city currently allows the creation of ADUs on single-family residential lots (Mun. Code, § 9.09.130), ADU statute allows ADUs to be created on sites that are zoned to allow single-family or multifamily dwelling residential use and where a proposed or existing dwelling exists, either single-family or multifamily. (Gov. Code, § 65852.2, subd. (a)(D)(ii).) Thus, the local ordinance is impermissibly narrow as to the permissible location of ADUs.

- Allowed areas for the creation of junior accessory dwelling units (JADUs): Local agencies must allow JADUs to be created on lots zoned for single-family residences with a proposed or existing single-family residence on the lot. (Gov. Code, §§ 65852.2, subds. (a)(1), (b), (e)(1), and 65852.22, subd. (a)). The JADU must be created within the walls of the single-family residence. (Gov. Code, § 65852.22, subd. (a)(4).)
- ADU development standards: The City's code applies generally applicable development standards to ADUs. (Mun. Code, § 9.09.130.F.10.) ADU development standards may be imposed by the local agency with an adopted ADU ordinance. Standards within an underlying zone may apply when noted in the adopted ADU ordinance but shall not be more restrictive than those in contained in state statute. (See, e.g., Gov. Code, § 65852.2, subds. (a)(1)(B), (a)(1)(D)(vii), (a)(1)(D)(x), (c), and (e).) As an example, among other standards, setbacks to side and rear lot lines shall not be required to be greater than 4' and ADU heights shall not be required to be less than 16'. Therefore, the setbacks, size, height, lot size, etc. noted in the Municipal Code (Mun. Code, § 9.09.130.F.10 [applying larger standards by incorporation]), conflict with and are not in compliance with state ADU law. (Gov. Code, § 65852.2, subds. (a) and (e).)
- Fees for ADUs: 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 of the ADU and the primary dwelling unit. (Gov. Code, § 65852.2, subd. (f)(1).)

Utility connection fees or capacity charges may not be imposed on an ADU or JADU when the unit is created within the space of an existing structure. (Gov. Code, § 65852.2, subd. (f), § 65852.22, subds. (e), (f).) Although connection fees or capacity charges may be imposed if the ADU is not created within the space of an existing structure, the fees or charges shall be proportional to the size of the ADU, in relation to the size of the primary dwelling. (Gov. Code, § 65852.2, subd. (f)).

The City's Municipal Code (Mun. Code, § 9.09.130.D) states that ADUs are subject to all development fees established by the City. HCD has not reviewed the City's fee structure but urges the City to review it for compliance with state law. HCD further requests that the City address its compliance in this respect in any response to HCD.

- Application processing schedule: A permit application for an ADU or JADU shall be considered and approved ministerially, without discretionary review, within 60 days from the date the local agency receives a completed application, if there is an existing single-family or multifamily dwelling on the lot (Gov. Code, §§ 65852.2, subds. (a)(3) and (b)).

HCD has not reviewed the City's processing schedule but urges the City to review it for compliance with state law. HCD further requests that the City address its compliance in this respect in any response to HCD.

- Proposed or existing dwelling on site: The City's definition of an ADU and the requirement for an existing dwelling is too narrow and inconsistent with state ADU law. (See, e.g., Mun. Code, §§ 9.09.130.C.1, 9.09.130.E.1, 9.09.130.F.1.) Sites that are zoned to allow single-family or multifamily residential dwelling units, and include a *proposed or existing dwelling unit*, shall allow an ADU to be created on the lot. (Gov. Code, § 65852.2, subd. (a)(1)(D)(ii).) JADUs may be created on sites with a *proposed or existing single-family dwelling* in single-family residential zones (Gov. Code, § 65852.22, subd. (a)).
- Number of ADUs allowed per site: One ADU may be created with a single-family or *multifamily dwelling* on a lot. The City's code is overly restrictive. (Compare for instance Mun. Code, § 9.09.130.F.1.) An ADU and JADU may be allowed when the ADU is created within the space of an existing structure, created as an addition to an existing structure, or as a new detached structure and the JADU is created within the walls of the single-family residence (Gov. Code, § 65852.2, subds. (a)(1), (e)(1)(A), and (e)(1)(B)).

Multiple ADUs may be created on a lot that contains an existing multifamily dwelling structure. Non-livable space within the structure may be converted into at least one ADU, with the potential for additional units if the number of units does not exceed 25% of the existing dwelling units in the structure. As an alternative, not more than two ADUs, detached from the dwelling structure, may be created on the lot. (Gov. Code, § 65852.2, subds. (e)(1)(C) and (e)(1)(D).)

- Owner-occupancy: The City's ordinance mandates owner occupancy. (Mun. Code, § 9.09.130.F.5.) An owner-occupant requirement shall not be imposed on a site that proposes to create an ADU. (Gov. Code, § 65852.2, subd. (a)(6).)
- Lot size requirement: The City's ordinance establishes a minimum lot size. (Mun. Code, § 9.09.130.F.6.) Local development standards shall not include requirements for minimum lot size. If the site for a proposed ADU is constrained by the size of the lot, the local agency shall still permit an ADU of at least 800 square feet. (Gov. Code, § 65852.2, subds. (a)(1)(B), (c)(2)(C), (e)(6).)
- Minimum size of ADU: The City's ordinance establishes a minimum ADU size of 450 square feet. (Mun. Code, § 9.09.130.F.8.) Although a local agency may establish standards for the maximum size of an ADU within other statute limitations (Gov. Code, § 65852.2, subd. (a)(1)(B), there are restrictions on the minimum ADU size that are smaller than the City's minimum. An efficiency unit (as small as 150-220 square feet) is considered an ADU and shall be permitted (Gov. Code, § 65852.2, subds. (a)(6) and (j)(i)(A), referencing Health & Safety Code, § 17958.1.)

In addition, ADUs created as a conversion of space within an existing structure are exempt from local agency development standards and are therefore not constrained by minimum or maximum unit sizes (Gov. Code, § 65852.2, subd. (e)(1)).

- Parking requirements and exceptions: The parking standards in the City's code may exceed state law mandates and should be clarified. (Mun. Code, § 9.09.130.F.18.) Parking requirements for ADU shall not exceed one parking space per ADU and may be provided in front setbacks and as tandem parking space on a driveway. Local agencies shall exempt an ADU from requiring any parking spaces under certain conditions, as noted in statute. (Gov. Code, § 65852.2, subds. (a)(1)(D)(x) and (d).)
- Displacement of existing parking: The parking standards in the City's code for displacement may exceed state law mandates and should be clarified. (Mun. Code, §§ 9.09.130.F.18 and 9.09.130.F.19.) Local agencies shall not require the replacement of off-street parking spaces when garages, carports or other parking structures are demolished or converted in conjunction with the construction of an ADU. (Gov. Code, § 65852.2, subd. (a)(D)(xi)).

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 accessory dwelling units. Please note that failure to comply with section 65852, subdivision (h), may lead to further action, including a referral to the California Attorney General's Office.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West", written in a cursive, flowing style.

Shannan West
Land Use and Planning Unit Chief