

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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



June 29, 2021

Carlene Saxton, Acting Planning Manager
City of Palmdale
38300 Sierra Highway
Palmdale, California, 93550

Dear Carlene Saxton:

RE: Palmdale's Accessory Dwelling Unit (ADU) Ordinance

Thank you for submitting the City of Palmdale's (City) accessory dwelling unit (ADU) ordinance (Ordinance No. 1539, adopted April 7, 2020) to the California Department of Housing and Community Development (HCD). The purpose of this letter is to submit written findings on the ADU ordinance pursuant to Government Code section 65852.2, subdivision (h). HCD requests that the City provide a written response to these findings no later than July 30, 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, subdivision (h)(3).

The adopted ADU ordinance meets many statutory requirements. However, the ordinance requires revisions to comply with State ADU Law (Gov. Code, § 65852.2), as follows:

- **Existing Structure**: The City's definition of "existing" for the purposes of implementing its ADU ordinance is impermissibly limited to structures constructed no less than two years prior to the date of application. (Ordinance No. 1539, § (3)(b).)¹ Government Code section 65852.2 does not state a timeframe in its definition of an accessory structure; as such, the plain meaning of the term controls and is "in existence at the time under consideration." (See *Lindstrom v. California Coastal Com.* (2019) 40 Cal.App.5th 73, 94 [courts give statutory "language its usual and ordinary meaning"].) Therefore, any primary residence, accessory structure, or other structure legally permitted in existence before the application date is an existing structure under the law. The City's ordinance is more restrictive than what is allowed, would likely prohibit most proposed ADUs, and should be

¹ The term constrains virtually every structure under the ordinance. (See, e.g., Ordinance No. 1539, §§ (4)(C)(2)(a)(ii) ["existing primary single family dwelling"], (4)(C)(3)(a) ["existing living area," "existing accessory structures" and "existing structures"], (4)(C)(6)(a)(i) ["existing driveway"]; (4)(C)(6)(a)(i) ["existing primary residence or accessory structure"]; (4)(D)(1)(b) ["existing multi-family residential dwelling" and "existing multi-family residential structure"]; (4)(D)(1)(b)(ii) ["twenty-five percent (25%) of the number of the existing residential units"]; (4)(D)(6) ["Conversion of existing primary unit].) This is not a comprehensive recitation.

revised to extend to any applicable existing structure regardless of how long ago it was built. (Gov. Code, § 65852.2.)

- *Development Standards (Side-yard Setbacks)*: Local agencies may impose development standards on ADUs; however, these standards shall not expand the types of side yard setbacks. Currently, the ordinance requires ADUs to comply with the applicable street side yard setbacks. (Ordinance No. 1539, §§ (4)(C)(3)(b) and (4)(E)(1)(b)). Side yard setbacks set out in statute apply regardless of whether the side yard is adjacent to a street, creek, or house. The adopted ordinance must be revised to allow ADUs with four-foot rear and side yard setbacks, but this provision may include the City's applicable front yard setback. (Gov. Code, § 65852.2, subds. (c)(2)(C) and (a)(1)(B)(i).)
- *Where Feasible (Minimum Distance and Location)*: The City may impose development standards such as the minimum distance between an ADU and a primary dwelling; however, the City must still accommodate for an ADU of up to at least 800 square feet, 16 feet in height, and with four foot rear and side yard setbacks to be built in the minimum required distance area if this is the only allowable space. Section (4)(C)(3)(c) should be revised to include "where feasible," which will give more flexibility in language to accommodate an ADU of at least 800 square feet. In addition, the City's location requirement of newly constructed ADUs (section (4)(C)(4)) must also include the statement "where feasible" to accommodate ADUs. (Gov. Code, § 65852.2, subd. (c)(2)(C).)
- *Septic System for Junior Accessory Dwelling Unit (JADU)*: The local agency may require a new or separate utility connection for an ADU constructed with a new single family home but may not do so for JADUs under Government Code section 65852.22. Therefore, Section (4)(D)(2)(a) must be revised to address only ADUs that are constructed with new single family homes. (Gov. Code, §§ 65852.2, subd. (f)(4), 65852.22, subd. (e).)
- *Exterior Stairway Limitation*: The local agency may impose development standards for an ADU so long as those standards do not conflict with State Statute. Section (4)(D)(5), however, precludes ADUs from a second floor if the existing structure lacks accessories such as an exterior stairway. This is impermissible because the Government Code allows expansions up to 150 square feet to accommodate ingress and egress. The City's restrictions are beyond State Law, and the ordinance must be revised to delete this from section (4)(D)(5). (Gov. Code, § 65852.2, subd. (e)(1)(A)(i).)
- *Parking Requirement*: Local agencies may reduce or eliminate parking requirements but shall not exceed one parking space per ADU. When a covered parking structure is demolished in conjunction with the construction of or conversion of an ADU, the local agency shall not require parking spaces to be replaced. The City currently calls out parking as one of the requirements that attached ADUs must comply with in Section (4)(D)(5)(b)). Because of its conflicts with the Government Code, the ordinance must be revised to eliminate parking

requirements when a garage, carport, or covered parking is demolished in conjunction with the construction of an ADU or converted to an ADU. The ordinance should reflect the elimination of parking in conjunction with the creation of an ADU based on this scenario. (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi).)

- *Minor Language Change:* Section (4)(E)(1)(a) currently states, “One [ADU] or [JADU] per lot may be constructed.” This statement is inconsistent with other provisions of the City’s ordinance and with State ADU Law. To make Section (4)(E)(1)(a) correlate with all other sections of the ordinance and with State ADU Law, the ordinance must be amended to eliminate this inconsistency. The easiest way to make them consistent would be to change the conjunction “or” to “and.” (Ordinance No. 1539, § (4)(C); Gov. Code, § 65852.2, subd. (c)(2)(C).)

The City’s housing element commits the City to enhance the existing viable housing stock. Following consultation with HCD, the adopted ADU ordinance, once revised will contain the necessary revisions to enhance and encourage ADU creation. The City’s adopted ADU ordinance with revisions will comply with State ADU Law under California Government Code sections 65852.2 and 65852.22.

HCD appreciates the City’s efforts in the adoption of the ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please feel free to contact Edgar Camero, of our staff, at (916) 263-5116 or edgar.camero@hcd.ca.gov for any additional information.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Land Use & Planning Unit Chief