

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

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March 29, 2023

Abel Avalos, Director
Department of Community Development
City of Lakewood
5050 Clark Avenue
Lakewood, CA 90712

Dear Abel Avalos:

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

Thank you for submitting the City of Lakewood (City) accessory dwelling unit (ADU) Ordinance No. 2020-1 (Ordinance), adopted February 11, 2020, to the California Department of Housing and Community Development (HCD). HCD has reviewed the Ordinance and submits these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD finds that the Ordinance does not comply with sections 65852.2, 65852.22, and 65852.26 in the manner noted below. Under that 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 April 28, 2023.

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

- 9302.1 (B) – *Owner Occupancy* – The Ordinance states that “a JADU may only be occupied by an independent tenant only when the primary dwelling unit is occupied by the property owner.” However, Government Code section 65852.22, subdivision (a)(2), states that “The [property] owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit.” Therefore, the City must amend the language to allow owner occupancy in either the primary unit or the junior accessory dwelling unit (JADU).
- 9302.21a (D)(4)(a) – *ADU Height Maximums* – The Ordinance makes references to maximum height allowances for ADUs being 16 feet. However, Senate Bill 897 (Chapter X, Statutes of 2022) (SB 897) amended Government Code 65852.2, subdivision (c)(2)(D), increasing the maximum height limitation that may be imposed by a local agency on an ADU to 18 feet if the ADU is within one-half mile walking distance of a major transit stop or a high-quality transit corridor or the ADU is detached and on a lot that has an existing multifamily, multistory dwelling.

SB 897 also amended subdivision (c)(2)(D)(iii) to increase the maximum height limitation that may be imposed to 25 feet if the ADU is attached to a primary dwelling. Therefore, the City must update its allowances of maximum height limitations to conform to changes to state law.

- 9302.21a – *ADU Definition* – The Ordinance states: “An ADU shall provide a completely independent living facility, including facilities for living, sleeping, eating, cooking, laundry connections and sanitation for one or more persons.” (Emphasis added.) Per Government Code section 65852.2, subdivision (j)(1), an ADU must only include “permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated.” California’s definition of an ADU does not require laundry connections. Therefore, the City must remove “laundry connections” from its definition of an ADU to account for this discrepancy.
- 9302.21a (B) – *ADU Allowance* – The Ordinance states: “The City shall ministerially review...and approve an application for a building permit to create one ADU per lot that has an existing or proposed single-family dwelling unit...” (Emphasis added.) While the Ordinance later specifies JADU allotments, Government Code section 65852.2, subdivision (e)(1)(A), requires local agencies to allow for both one ADU and one JADU per lot with a proposed or existing single-family dwelling (provided they meet certain conditions). Further, the Ordinance fails to clarify that subdivision (e) allows for the combination of (e)(1)(A) and (e)(1)(B) ADUs, leading for the creation of more than “one ADU per lot.” Therefore, the City must modify this language to clarify that state statute allows for one attached ADU and JADU per single-family dwelling as well as for the combination of subdivision (e) ADUs.
- 9302.21a (B) – *Discretionary Review* – The Ordinance states that “City staff shall review the proposed ADU(s) to ensure architectural compatibility between the proposed ADU and the existing dwelling unit(s). The quality of the materials shall be the same or exceed the quality of the primary unit(s). This review includes coordinating all architectural elements to be consistent and/or compatible with the primary dwelling unit, as follows...” It then lists eight design elements that the City staff shall review. However, “compatibility,” “material quality,” and “consistency” are not “Objective Standards” as defined by Government Code section 65852.2, subdivision (j)(7): “standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Government Code section 65852.2, subdivision (a)(1)(B)(i), states that ordinances shall “[i]mpose objective standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic

Resources.” Therefore, the City must remove references to non-ministerial approval practices.

- 9302.21a (D)(1) – *Existing Habitable Structures* – The Ordinance states that “there shall be no more than one ADU or other habitable accessory structure (e.g., guest house) on any lot...” (Emphasis added.) The Ordinance would disallow the creation of an ADU on a lot which already has an existing guest house. However, Government Code section 65852.2, subdivision (a)(7), states, “No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision...” Therefore, the presence of a habitable non-ADU structure on a lot cannot preclude the development of an ADU. The City must remove the reference.
- 9302.21a (D)(2) – *Eave Setbacks* – The Ordinance states: “There shall be a minimum 4-foot setback between eaves of an ADU and other detached buildings.” Such a requirement imposes unlawful restrictions for state exempt ADUs covered under Government Code section 65852.2, subdivision (e), which have no such eave setback requirements. Therefore, the City must remove these references or clarify their exceptions.
- 9302.21a (D)(2) – *Front Setbacks* – The Ordinance states: “No portion of a proposed ADU shall be in the front yard setback area...” However, Government Code section 65852.2, subdivision (c)(2)(C), prohibits “any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” (Emphasis added.) Therefore, the City must note that local design requirements, including front setbacks, cannot preclude an ADU of at least 800 square feet, with four-foot side and rear yard setbacks.
- 9302.21a (D)(3) – *Conversion Limitations* – The Ordinance states that “An ADU shall have a minimum floor area of 150 square feet and shall not exceed 1,200 square feet in area.” Government Code section 65852.2, subdivision (a)(1)(D)(iii) allows for ADUs to be located within the propose or existing primary dwelling. However, State ADU Law does not have size limitations for ADUs converted from existing space of the primary dwelling or accessory structure, as standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created under subdivision (e) and only subdivisions (e)(1)(B) and (e)(1)(D) positively state a specific maximum size. Therefore, the City should amend the Ordinance to remove size limitation to converted units

- 9302.21a (D)(5) – *Passageway Requirements* – Section 5 of the Ordinance states: “Each ADU shall have an independent exterior door to access the ADU with a paved path of travel from it to the public sidewalk.” The section also includes specifications for required passage width and path structure. However, Government Code section 65852.2, sub-division (a)(1)(D)(vi) states: “No passageway shall be required in conjunction with the construction of an accessory dwelling unit.” Therefore, the City must remove this requirement.
- 9302.21a (D)(5) – *Roof Overhang* – The Ordinance states: “The ADU entry door shall be covered with a projecting roof overhang with a porch, unless otherwise approved by the Community Development Director or designee.” This suggests potential for a discretionary review process for the attempted passageway requirements. This is not allowed under Government Code section 65852.2, subdivision (a)(3), which states: “A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing...” Therefore, the City must state the conditions under which an overhang may not be ministerially required or remove this section.
- 9302.21a (D)(8) – *Water, Traffic Flow and Public Safety* – The Ordinance states that “the City may deny an application for a detached ADU, unless otherwise allowed by Government Code section 65852.2, subdivision (e), based on a determination that there is inadequate water or sewer services to serve the ADU and/or that the ADU will create impacts on traffic and public safety.” The Ordinance appears to be referencing Government Code section 65852.2, subdivision (a)(1)(A). However, this section states that an ordinance authorizing ADU development in a jurisdiction shall “[d]esignate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.” While the statute authorizes the designation of whole *areas* that are suitable for ADU development, the Ordinance appears to interpret this as a matter of *individual ADU application approvals*. This would be a misinterpretation and a violation of subdivision (a)(1)(A), which requires local agencies to designate areas where ADUs may be permitted. Therefore, the City must clarify this point.
- 9302.21a (D)(8)(b) – *Fire Flow* – The Ordinance states: “An ADU and all portions of the related dwelling unit shall be within 450 feet of a fire hydrant with a clear path to run a fire hose from the fire hydrant to all parts of the proposed ADU and the related dwelling unit.” Please clarify whether the 450 feet requirement is applicable to all residential developments. If this section applies exclusively to ADUs, then it may violate Government Code section 65852.2, subdivision (a)(8), which states, “This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot... No additional standards, other than those provided in this subdivision, shall be used

or imposed....” Please clarify whether the requirement exists for all residential development; if it does not, the City must remove the section.

- 9302.21a (D)(10) – *Garage and Other Building Conversions* – The Ordinance states: “Conversions of existing structures shall not leave any shadowing of previous doors and windows. Such doors and windows shall be fully removed including framing. The remaining wall will be reconstructed with stucco or alternate siding material that leaves no sign of the previous installations. Existing garage floors shall be appropriately retrofitted to be flat with moisture barriers and raised to comply with adopted building codes.” However, 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) – as all conversions would be. Therefore, the City must remove this section or change it to a recommendation.
- 9302.21a (D)(11)(b) and (E)(3); 9302.21.b (D)(2) and (E)(4) – *Short Term Home-Share Rental* – The Ordinance states in several instances that ADUs and JADUs shall not be rented as “short-term home-share rentals”. This appears to reference AirBnB or Vrbo type rentals that are less than 30 days. Government Code section 65852.2, subdivision (a)(8)(C), states that a local agency may require that an ADU be used for rental longer than 30 days. The City should define what qualifies as “short term” by indicating that rentals must be at least 30 days.
- Section 6 (C)(3) – *JADU Passageway* – The Ordinance states: “Each JADU shall have an independent exterior door to access the JADU with a paved path of travel from it to the public sidewalk. All exterior access doors and gates along the required path of travel shall be a minimum 36" wide.” However, Government Code section 65852.22, subdivision (a)(5), only authorizes a local agency to require a separate entrance for a JADU, it does not require a paved path from the JADU to the sidewalk. The City should remove this requirement from the Ordinance.
- 9302.21a (E)(1) – *Separate Sale* – The Ordinance requires a “Notice of Condition” with a clause prohibiting the separate sale of an ADU from its primary dwelling. However, Government Code section 65852.26 creates a narrow exception to allow separate conveyance of an ADU to a qualified buyer if the property was built or developed by a qualified non-profit corporation, among other things. The City must revise the Ordinance to allow for such an exception.
- 9302.21b Introduction and (A) – *JADUs in Proposed Dwellings* – The Ordinance allows for JADUs “within an existing legally established and maintained single-family dwelling unit...” However, JADUs may be created within *proposed* single-family dwelling units. Government Code section 65852.22, subdivision (a)(1), provides for the creation of JADUs in “single-family residences with a single-family residence built, or proposed to be built, on the lot.” Therefore, the City

must add "*proposed* single-family dwellings" anywhere it establishes where JADUs may be created.

In response to the findings in this letter, and pursuant to Government Code section 65852.2, subdivision (h)(2)(B), the City must either amend the Ordinance to comply with State ADU Law or adopt the Ordinance without changes. Should the City choose to adopt the Ordinance without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinance complies with State ADU Law despite the findings made by HCD. Accordingly, the City's response should provide a plan and timeline to bring the Ordinance into compliance.

Please note that, pursuant to Government Code section 65852.2, subdivision (h)(3)(A), if the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD may notify the City and the California Office of the Attorney General that the City is in violation of State ADU Law.

HCD appreciates the City's efforts provided in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please feel free to contact Nicholas Green, of our staff, at (916) 841-6665 or at Nicholas.Green@hcd.ca.gov.

Sincerely,

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

Shannan West
Housing Accountability Unit Chief