

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

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October 14, 2022

Heidi Vonblum, Planning Director
Planning Department
City of San Diego
9485 Aero Dr, M.S. 413
San Diego, CA 92123

Dear Heidi Vonblum:

**RE: Review of the City of San Diego's Accessory Dwelling Unit (ADU) Ordinance
under State ADU Law (Gov. Code, § 65852.2)**

Thank you for submitting the City of San Diego's (City) accessory dwelling unit (ADU) Ordinance No 21254 (Ordinance), adopted October 30, 2020, to the California Department of Housing and Community Development (HCD). The Ordinance was received on September 15, 2021. 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 section 65852.2 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 November 12, 2022.

HCD commends the City's commitment to ADU and junior accessory dwelling unit (JADU) creation and understands that the JADU provisions are meant to provide a wider range of options. HCD also recognizes that the Ordinance is more permissive in some areas than required by statute, such as requiring smaller setbacks and waiving parking requirements, and that the Ordinance offers incentives to encourage ADU production. HCD appreciates these efforts and encourages the City to continue to seek creative solutions within the opportunities and constraints provided by statute.

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

- Section 113.0103 – Efficiency Kitchen Definition – The Ordinance states that “*Efficiency kitchen* means a food storage and preparation area of containing a kitchen sink, cooking appliance, and refrigeration facilities, each having a clear working space of not less than 30 inches in front.” However, the sink requirement, previously specified in Government Code section 65862.22,

subdivision (a)(6), was removed and efficiency kitchen is now defined as “[a] cooking facility with appliances.” (Gov. Code, § 65852.22, subd. (a)(6)(A).) It shall include “[a] food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.” (Gov. Code, § 65852.22, subd. (a)(6)(B).) The City must remove the sink requirement and the reference to refrigeration facilities and the working space of not less than 30 inches to comply with existing statute. HCD recommends adopting language strictly per the above-mentioned subdivisions for conciseness and compliance.

- Section 141.0302 (a)(2)(D)(ii) – JADUs & “New Structures” – The Ordinance states that “New ADU and JADU structures must comply with front yard and street side yard setbacks....” However, JADUs are only permitted within the walls of a primary single-family dwelling; therefore, separate setbacks do not apply to JADUs. The City should remove the reference to JADUs.
- Section 141.0302 (a)(2)(F) – Max Size – The Ordinance states that “the maximum gross floor area of an ADU shall not exceed 1,200 square feet.” However, converted ADUs created pursuant to Government Code section 65852.2, subdivision (e)(1)(A), may not be subject to size limitations. The City should add language to explain this exception.
- Section 141.0302 (c)(2)(B) – JADUs – The Ordinance states, “A JADU of not less than 150 square feet and not more than 500 square feet is permitted within an existing or proposed single dwelling unit, an attached or detached garage, or an ADU. A JADU constructed within an existing structure may construct an additional 150 square feet for ingress and egress only.” The City’s provision to allow JADUs in ADUs and accessory structures—while allowing greater flexibility for JADU construction—goes beyond what State ADU and JADU law prescribe and conflicts with Government Code section 65852.22, subdivision (h)(1), which defines a JADU as a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. HCD has maintained that this includes attached garages, as attached garages are considered within the walls of the existing single-family residence. (HCD ADU Handbook, July 2022, p. 24)

Please also note that JADUs are not allowed in accessory structures, ADUs, and *detached* garages. The creation of a JADU must be within the single-family residence per Government Code section 65852.22, subdivision (a)(4). Furthermore, only ADUs are allowed to add up to 150 square feet beyond the physical dimensions of the existing accessory structure to provide for ingress and egress. (Gov. Code, § 65852.2, subds. (e)(1)(A)(i) and (iv).) The City must remove this section from its ordinance to comply with state law.

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 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 Mike Van Gorder, of our staff, at (916) 776-7541 or at mike.vangorder@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" and the last name "West" clearly distinguishable.

Shannan West
Housing Accountability Unit Chief
Housing Policy Development Division