

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

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December 7, 2023

Bradley Calvert, Community Development Director
Community Development
City of Glendale
633 E. Broadway, Room 103
Glendale, CA 91206

Dear Bradley Calvert:

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

Thank you for submitting the City of Glendale's accessory dwelling unit (ADU) Ordinance No. 5997 (Ordinance), adopted November 15, 2022, 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 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 January 6, 2023.

The Ordinance addresses many statutory requirements; however, HCD finds that the Ordinance does not comply with State ADU Law¹ in the following respects:

- 30.11.050 – “*Dwelling Unit*” – The Ordinance states “The gross floor area of **any dwelling unit** shall not be less than provided herein... 1. Efficiency and one (1) bedroom units: six hundred (600) square feet. 2. Two (2) bedroom units: eight hundred (800) square feet. 3. Three (3) or more bedroom units: one thousand (1,000) square feet.” However, ‘any dwelling unit’ would necessarily include ADUs, and the size minimums listed herein would apply to such units.

Government Code section 65852.2, subdivision (j)(1) defines “Accessory Dwelling Unit” as including “An efficiency unit”, which is defined in Section 17958.1 of the Health and Safety Code as having “a minimum floor area of 150 square feet.” Additionally, local design standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), may not preclude a unit built subject Government Code section 65852.2, subdivision (e), which includes all converted units, all Junior Accessory Dwelling Units

¹ While the Ordinance governs both ADU and SB9 implementation, it is beyond the scope of this letter to provide detailed findings on incompliance with SB 9. (Gov. Code, §§ 65852.21 and 66411.7)

(JADUs), 800 square feet new construction detached units with four-foot setbacks, and detached units with multifamily primary dwelling structures. Therefore, application of size minimums to ADUs is inconsistent with State ADU Law. The City must amend the Ordinance or clarify that the minimum size allowance allowed for “dwelling units” in 30.11.050 do not apply to ADU and JADUs.

- Table 30.11 - A – *JADUs and Zoning* – The Table permits JADUs in the following multifamily zones: R3050, R2250, R1650, and R1250. However, Government Code section 65852.22, subdivision (a), provides “a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones.” Since JADUs may only be created in single-family zones, the City must amend the Ordinance to comply with State ADU Law.
- 30.34.080 (D)(1) – *Proposed Multifamily* – The Ordinance states that ADUs “...shall be permitted in any zone that allows residential uses and is developed with residential uses or, **in the case of single family zones only**, is proposed to be developed with a residential dwelling unit.” The Ordinance limits ADUs with proposed dwelling units to single family zones. However, Government Code section 65852.2, subdivision (a)(1)(D)(ii), provides for ADUs on a lot “zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.” The Ordinance does not allow for ADUs within proposed multifamily developments and therefore violates State ADU Law. The City must amend the Ordinance to comply with State ADU Law.
- 30.34.080 (D)(3),(D)(7), (E)(1) and (F)(1) – *Exception Clause* – The Ordinance states that ADUs and JADUs “are subject to the underlying zoning development standards for setback, floor area ratio, lot coverage, height, parking, open space and landscaping that are applicable to the primary residential dwelling or dwellings...” It later states “All new construction accessory dwelling units attached to the existing primary dwelling shall not exceed fifty percent (50%) of the existing floor area of the primary dwelling....”

However, Government Code section 65852.2, subdivision (c)(2)(C), prohibits “Any requirement for a zoning clearance or separate zoning review or 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.” Therefore, the City must allow for at least an 800 square foot ADU, even if the resulting floor area ratio would be greater than 50%. The City must amend the Ordinance to comply with State ADU Law.

- 30.34.080 (D)(3) – *JADUs and Underlying Zoning* – The Ordinance states that ADUs and JADUs “are subject to the underlying zoning development standards for setback, floor area ratio, lot coverage, height, parking, open space and landscaping that are applicable to the primary residential dwelling or

dwellings...” However, local design standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), may not preclude a unit built subject Government Code section 65852.2, subdivision (e), which includes all JADUs. Therefore, the City must remove the reference to JADUs in this section.

- 30.34.080 (D)(9) – *Accessory Living Quarters* – The Ordinance states “A lot where only one residential unit exists may have either an accessory dwelling unit or an accessory living quarter, but not both.” Government Code section 65852.2, subdivision (a)(1) states, “(a)(1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following” and subdivision (a)(1)(D)(iii) states that an ADU is “either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages.” The Ordinance requires an ADU applicant to convert an accessory living quarter to an ADU. State ADU Law; however, provides a choice of the type of ADU to be created and does not require that existing areas (i.e., accessory living quarters), be converted to an ADU. The Ordinance is more stringent than State ADU Law. Additionally, local standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), may not preclude a unit built subject Government Code section 65852.2, subdivision (e). Therefore, the City must amend the Ordinance to comply with State ADU Law.
- 30.34.080 (D)(10) – *Front Setback* – The Ordinance states “In no case shall new construction of an accessory dwelling unit be located between the primary residential dwelling(s) and the street front and street side setback.” This Ordinance section exempts units subject to 30.34.080 (E)(4), specifically converted ADUs and JADUs, and new construction detached units subject to Government Code section 65852.2, subdivision (e)(1)(B). The Ordinance prohibits all other ADUs, created pursuant to Government Code section 65852.2, subdivisions (a), (e)(1)(C), and (e)(1)(D) from being located between the primary dwelling and the street front and street side setback (i.e., front setback).

Government Code section 65852.2, subdivision (c)(2)(C), prohibits “Any requirement for a zoning clearance or separate zoning review or 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.” Regardless of front setback requirements, the City must allow for an 800

square foot attached or detached ADU with four-foot side and rear yard setbacks. The City must amend the Ordinance to comply with State ADU Law.

- 30.34.080 (D)(11) and (H)(1)(d) – *JADU Terms* – The Ordinance states Any rental of an accessory dwelling unit and/or junior accessory dwelling unit created pursuant to this Section shall be for a term longer than 30 days.” However, Government Code section 65852.2, subdivision (e)(5) states “A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.” This requirement applies only to ADUs. Government Code section 65852.22 does not have a similar provision of a minimum rental term that applies to JADUs. Therefore, the City must amend the Ordinance to comply with State ADU Law.
- 30.34.080 (D)(12) – *Separate Sale* – The Ordinance states that “Except as provided in Government Code section 65852.26, the accessory dwelling unit and/or the junior accessory dwelling unit cannot be sold separately from the residential dwelling(s).” Please note that the chaptering of AB1033 (Chapter 752, Statutes of 2023) gives local jurisdictions the option to adopt an ordinance to govern separate sale of an ADU from its primary dwelling, effective January 1, 2024.

Additionally, Government Code section 65852.22, subdivision (a)(3)(A), prohibits the separate sale of JADUs from the primary residence, and Government Code section 65852.26 is only applicable to the separate sale of ADUs (and not JADUs.) The City should clarify the Ordinance to comply with State ADU Law.

- 30.34.080 (E)(4)(b) and (F)(2) – *Unit Mixture* – The Ordinance states that “an accessory dwelling unit constructed under subparagraph [(E)(4)(b)] above may be combined to allow a [JADU] in the manner described in subparagraph [(E)(4)(a)] above...” This appears to allow a JADU to be created only with one ADU per either section (E)(4)(a) or (E)(4)(b). The Ordinance does not explicitly allow for a combination of ADUs under (E)(4) and (E)(4)(b). The Ordinance under subparagraph (F)(2) states that, with a multifamily primary dwelling, “the applicant is entitled to build accessory dwelling units under either subparagraph (a) or (b) below, but not both.” This expressly prohibits the combination of ADUs provided by Government Code section 65852.2, subdivisions (e)(1)(C) and (e)(1)(D). In effect, the Ordinance allows only one category of ADU to be built on a lot to the exclusion of all others.

Government Code section 65852.2, subdivision (e)(1), states, “Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following: (A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling...(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single family dwelling or existing space of a single-family dwelling or

accessory structure.” Subparagraph (B) permits “One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks.” The use of the term “any” followed by an enumeration of by right ADU types permitted indicate that any of these ADU types can be combined on a lot zoned for single family dwellings.

This permits a single-family homeowner, who meets specified requirements, to create one converted ADU; one detached, new construction ADU; and one JADU. Thus, if the local agency approves an ADU that is created from existing (or proposed) space, and the owner subsequently applies for a detached ADU (or vice versa) that meets the size and setbacks pursuant to the subdivision, the local agency cannot deny the application, nor deny a permit for a JADU under this section. HCD notes that the Legislature, in creating the list, did not use “or” nor “one of” to indicate only one or another would be applicable to the exclusion of the other.

This subdivision applies equally to ADUs created pursuant to Government Code section 65852.2, subdivisions (e)(1)(C) and (D), on lots with proposed or existing multifamily dwellings. Limiting single-family lots to one ADU would prevent property owners from creating ADUs by right under subdivision (e)(1). Therefore, the City must amend the Ordinance to allow for all by-right ADU combinations.

- 30.34.080 (E)(6) and (F)(5) – *Subjective Standards* – The Ordinance requires that “Accessory dwelling units and junior accessory dwelling units... shall be architecturally compatible with the [primary dwelling]...” However, Government Code section 65852.2, subdivision (a)(1)(B)(i), requires local ADU ordinances to “Impose objective standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit...” Subdivision (a)(7) defines “Objective standards as “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.” The term “architecturally compatible” is subjective. Therefore, the City must amend the Ordinance to comply with State ADU Law.
- 30.34.080 (E)(7) and (F)(6) – *Stories* – The Ordinance states that “New construction accessory dwelling units shall not be permitted above a detached garage or carport.” This applies to both single family primary dwellings and multifamily dwellings. However, Government Code section 65852.2, subdivision (a)(1)(D)(iii), permits a unit “either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages.” Recent statutory amendments added “detached garages” to this subdivision. Therefore,

provided that the resulting ADU satisfies the height requirements in Government Code section 65852.2, subdivision (c)(2)(D), the City may not prohibit the creation of an attached ADU above a detached garage. The City must amend the Ordinance to comply with State ADU Law.

- 30.34.080 (F)(4) – *Proposed Multifamily* – The Ordinance creates “Additional standards specific only to Accessory Dwelling Units on lots developed with existing multiple residential dwelling units.” However, while Government Code section 65852.2, subdivision (e)(1)(C) describes “existing multifamily dwelling structures,” subdivision (e)(1)(D) allows “Not more than two accessory dwelling units that are located on a lot that has an existing **or proposed** multifamily dwelling....” Additionally, subdivision (a)(1)(D)(ii) states that ADUs may be created on a lot “zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.” Therefore, ADUs may be created with any proposed multifamily development. Therefore, the City must amend the Ordinance to comply with State ADU Law.30.34.080
- (G)(4) – *Parking Exceptions* – The Ordinance lists five conditions under which “no onsite parking is required” and these conditions satisfy Government Code section 65852.2, subdivisions (d)(1)(A) through (d)(1)(E). However, the Ordinance must also reference the condition established in subdivision (d)(1)(F): “When a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit or the parcel satisfies any other criteria listed in this paragraph.” The City must amend the Ordinance to add the language contained in subdivision (d)(1)(F).
- 30.34.080 (H) – *Covenant* – The Ordinance states “A covenant and agreement shall be executed by the property owner and recorded for an **accessory dwelling unit and/or junior accessory dwelling unit** prior to the final approval of the building permit.” However, State ADU Law does not require a deed restriction for ADUs. Government Code section 65852.22, subdivision (a)(3), requires the recordation of a deed restriction for JADUs. However, the deed restrictions for JADUs are limited to prohibit separate sale of a JADU, and on the size and attributes of the JADU conforming to section 65852.22. 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,” and subdivision (a)(8) states, “This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used, or imposed...” Therefore, the City may not require a deed restriction prior to and as a condition of approval of an ADU building permit application. The City must amend this Ordinance section.

- 30.34.080 (H)(1)(c) – *Owner Occupancy and JADUs* – The Ordinance states “if the property owner does not reside in either the residential dwelling or the junior accessory dwelling unit, then the property owner shall only rent or lease the property as a single rental property...” However, Government Code section 65852.22, subdivision (a)(2) requires “owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.” Therefore, the City may not waive the owner occupancy requirement for JADUs inconsistent with State ADU Law. The City must amend the Ordinance to comply with Government Code section 65852.22.

HCD observes that the Ordinance sections 30.34.080 (E) and (F) effectively preclude ADUs proposed under Government Code section 65852.2, subdivision (a), and HCD would like to remind the City that pursuant to Government Code section 65852.2, subdivision (b)(1), if not addressed by ordinance, State ADU Law applies when processing applications related to (a) units.

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 contact Mike Van Gorder, of our staff, at (916) 776-7541 or at mike.vangorder@hcd.ca.gov if you have any questions or would like HCD’s technical assistance in these matters.

Sincerely,



Jamie Candelaria
Senior Housing Accountability Unit Manager
Housing Policy Development Division