

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

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November 27, 2023

Joseph Lambert, Director
Development Services Division
City of Placentia
401 E Chapman Avenue
Placentia, CA 92870

Dear Joseph Lambert:

RE: Letter of Technical Assistance: City of Placentia Compliance with Ministerial Approval Requirements State ADU Law (Gov. Code, § 65852.2)

On March 16, 2023, the California Department of Housing and Community Development (HCD) received a complaint about the City of Placentia's (City) Accessory Dwelling Unit (ADU) permitting process that included an incompleteness letter from the City requesting that the applicant "[s]ubmit a letter of approval from the HOA," and address other deficiencies, for the application to be deemed complete. On April 17, 2023, HCD provided initial technical assistance to the City via a virtual meeting. The City then requested HCD provide further technical assistance on this matter; this letter addresses that request.

The City, as discussed in the virtual meeting, requires Homeowners' Association (HOA) approval on permit plans for ADUs and junior accessory dwelling units (JADUs) as a condition of approval. The City indicated that properties subject to Covenants, Conditions, and Restrictions (CC&Rs) adopted by an HOA pursuant to the Davis-Sterling Act or other land use laws all have this pre-approval requirement applied to them. Please note that while HCD has not reviewed the City's ADU ordinance or made findings about its compliance with state law, nothing in the City's ADU ordinance provides for HOA preapproval as an objective requirement for an ADU application.

An HOA may not be included in the City's ministerial process to approve or deny an ADU or JADU. Government Code sections 65852.2 and 65852.22 require that local agencies ministerially approve or deny ADU and JADU permit applications without applying any discretionary review, including, but not limited to, discretionary review performed by third parties such as an HOA or their representatives or agents. (Gov. Code, § 65852.2, subd. (a)(6).) Only the state ADU statutes, local ADU ordinances, and building codes can be the basis for the delay of a building or use permit; no other local policies, ordinances, or regulations may be applied in the approval or denial of an ADU or JADU permit

application. (Gov. Code, § 65852.2, subd. (a)(7).) Allowing discretionary HOA intervention would be no different than allowing an interested member of the public to exercise quasi-judicial approval over the City's ministerial process. Such discretion would exceed the maximum standards permitted by State ADU Law. (Gov. Code, § 65852.2, subds. (a)(7) and (a)(8).)

Ultimately, the permitting and occupancy process remains one between property owners and permitting agencies. While HOAs may impose reasonable restrictions on ADUs and JADUs on lots zoned to permit single-family use, such restrictions may not unreasonably restrict or effectively prohibit an ADU or JADU compliant with state law from being created or used. (Civ. Code, §§ 714.3, 4751.) Where an HOA believes the property owner has violated CC&Rs, the recourses an HOA may legally take are governed by its CC&Rs and the California Civil Code. Allowing an HOA, or other third-party agent not authorized within State ADU Law, to be involved in any part of the application process for an ADU or JADU permit or certificate of occupancy use is a violation of State ADU Law.

If you have any questions, please contact Michael McLaughlin, of our staff, at Michael.McLaughlin@hcd.ca.gov.

Sincerely,

A handwritten signature in cursive script that reads "Jamie Candelaria".

Jamie Candelaria
Senior Housing Accountability Manager