

**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



January 29, 2024

Luis Torrico
Planning Manager
City of San Dimas
245 E. Bonita Avenue
San Dimas, CA 91773

Dear Luis Torrico:

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

Thank you for submitting the City of San Dimas (City) accessory dwelling unit (ADU) Ordinance, No. 1281 adopted October 13, 2020, ("Ordinance") to the California Department of Housing and Community Development (HCD). HCD has reviewed the ordinance and is submitting these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD has determined that the ordinance does not comply with section 65852.2 in the manner noted below. Under the 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 February 29, 2024.

The adopted ADU ordinance addresses many statutory requirements; however, HCD finds that the ordinance does not comply with ADU law in the following respects:

- 18.38.015 B – *JADU Definition* – The Ordinance defines junior accessory dwelling units (JADUs) as "A dwelling unit created out of space entirely within an existing single-family residence." This definition omits JADUs in "proposed" single-family residences. Government Code section 65852.22, subdivision (a)(1) refers to "a single-family residence built, or *proposed* to be built, on the lot." (Emphasis added.) Furthermore, Government Code section 65852.22, subdivision (a)(4) states, "enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence." Therefore, the omission of "proposed" and the allowance of JADUs within attached accessory structures violates State JADU Law. The City must amend the definition to comply with statute.
- 18.35.020 A. – *Unit Mixture* – The Ordinance states, "A maximum of one accessory dwelling unit, either attached or detached, and one junior accessory dwelling unit shall be permitted..." with a single-family primary dwelling. However, Government Code section 65852.2, subdivision (e)(1) states,

“Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application...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.” Moreover subpart (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. Statute does not use ‘or’ nor “one of” to indicate only one or another would be applicable to the exclusion of the other.

Thus, if the local agency approves an ADU that is created from existing (or proposed) space of a single-family dwelling, or created from an existing accessory structure, and the owner subsequently applies for a detached ADU permit (or vice versa), which meets the size and setback requirements, pursuant to the subdivision, the local agency cannot deny the applicant, nor deny a permit for a JADU under this section. This permits a homeowner, who meets specified requirements, to create one (1) converted ADU, one (1) detached, new construction ADU, and one (1) JADU, in any order without prejudice, totaling three units. This standard simultaneously applies to ADUs created pursuant to Government Code section 65852.2, subdivision (e)(1)(C) and (D), on lots with proposed or existing multifamily dwellings according to specified requirements. The City must amend the Ordinance to allow for these combinations.

- 18.38.020 B./C. – *Bulleting Error* – There seems to be an error in the bulleting where C. heads a section that is midsentence in B. It seems that C. was intended to head the sentence, “At least one accessory dwelling unit...” as this addresses the third of four categories created under Government Code section 65852.2, subdivision (e). The City should address the error.
- 18.38.020 D. – *Permitted Uses* – The Ordinance allows for detached ADUs in existing multifamily structures. However, the Ordinance fails to include detached ADUs with *proposed* multifamily structures. ADUs are permitted with *proposed* or existing multifamily dwelling structures pursuant to Government Code section 65852.2, subdivisions (a)(1) and (a)(1)(D)(ii). The City must amend the Ordinance to comply with State ADU Law.
- 18.38.030 D. and 18.38.040 A.4. – *Minimum Sizes* – The Ordinance states “there shall be no minimum size for [ADUs] which are converted from existing space.” It adds that “All newly constructed accessory dwelling units and junior accessory dwelling units have a minimum size of 220 square feet.” However, Government Code section 65852.2, subdivision (j)(1), defines an ADU to include “An efficiency unit”. Subdivision (j)(3) cites section 17958.1 of the Health and Safety

Code that defines an efficiency unit as a minimum of 150 square feet. Therefore, the City must amend the language to comply with State ADU Law.

- 18.38.020 D. – *Height of Detached ADUs with a Multifamily Dwelling Structure* – The Ordinance states that “Not more than two accessory dwelling units that are located on a lot that has an existing multi-family dwelling but are detached from the multi-family dwelling shall be allowed in zoning districts where multi-family dwelling residential uses are allowed. Such units are subject to a height limit of 16 feet and minimum four-foot rear yard and side yard setbacks.” Government Code section 65852.2, subdivision (c)(2)(D), provides for a maximum height for detached ADUs of 16, 18 or 20 feet based on the applicable provisions. The City must amend the Ordinance to comply with State ADU Law.
- 18.38.030 E. – *Separate Sale* – The Ordinance prohibits separate sale of an ADU from its respective primary dwelling. This does not reflect recent changes to state statute. Government Code section 65852.26, subdivision (a)(1), creates a narrow exception to allow separate conveyance of an ADU with the involvement of a “qualified nonprofit corporation” for “properties intended to be sold to low-income families who participate in a special no-interest loan program”. The City must amend to the Ordinance to allow for this exception. Please note that recent amendments to the statute now provide for a local agency to allow the separate sale or conveyance of a primary dwelling and an ADU as condominiums pursuant to Government Code section 65852.2, subdivision (a)(10).
- 18.38.030 F. – *Owner Occupancy* – The Ordinance states “For any accessory dwelling unit application on a single family developed property which is received on or after January 1, 2025, the owner of the subject property shall be the occupant of either the primary residence or the accessory dwelling unit and such restriction shall be recorded on an instrument as approved by the city attorney and shall run with the land.” However, effective January 1, 2024, Assembly Bill (AB) 976 (Chapter 751, Statutes of 2023) amended Government Code section 65852.2, subdivision (a)(8). This subdivision prohibits the City from imposing owner occupancy requirements for ADUs. Therefore, the City must remove this section from the Ordinance.
- 18.38.040 C. – *Front Yards* – The Ordinance states that for front yards, “the provisions of the applicable underlying zoning designation of the subject property shall apply.” 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 with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.”

(Emphasis added.) Therefore, front setbacks may not apply to or preclude a unit subject to the section. The City must note the exception.

- 18.38.040 H. – *Design Standards* – The Ordinance states, “The following design standards shall apply to all accessory dwelling units....” 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). Therefore, the City must add an exception for ADUs provided by subdivision (e).
- 18.38.040 E. and H.6. – *Height* – For height, the Ordinance states that “the provisions of the applicable underlying zoning designation of the subject property shall apply. For corner lots, the maximum height within the street-side setback shall be 16 feet.” However, Government Code section 65852.2, subdivision (c)(2)(D), sets height maximums at 16, 18, or 25 feet depending on circumstances on the lot. The City must review recent changes to ADU statute and amend the Ordinance accordingly.
- 18.38.040 H.2. and H.3. – *Entry* – The Ordinance requires that “The entrance to an attached accessory dwelling unit shall be on a separate elevation from the main entrance of the residence. Entry to an accessory dwelling unit or junior accessory dwelling unit shall not be on the elevation of the residence or garage which is parallel to the street.” It requires “no exterior entrances on elevations where the distance to a side property line is less than 15 feet.” However, local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), may not preclude ADUs created under Government Code section 65852.2, subdivision (e). Therefore, the City must remove or revise these sections.
- 18.38.040 I.2. and I.3. – *Garage Conversions* – The Ordinance states that for garage conversions a new façade “shall include a minimum of one window.” It also states that “a minimum of three feet of landscaping shall be added between the accessory dwelling unit and the driveway.” 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). All garage conversions are created pursuant to subdivision (e). Therefore, an ADU or JADU garage conversion is not required to comply with the window or landscaping requirements. The City must remove these requirements.
- 18.38.040 J.1. – *Washer/Dryer Hookups* – The Ordinance states. “Washer/dryer hookups shall be provided within the accessory dwelling unit. For junior accessory dwelling units, the hookups may be provided within a shared common space within the main residence.” However, Government Code section 65852.2, 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.” Washer and dryer hookups may not be required for an ADU. The City should amend this section. Local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), cannot preclude a unit subject to subdivision (e). Therefore, the City must add this exception.

- 18.38.040 K. – *Equestrian/Agricultural Property* – The Ordinance states. “Notwithstanding any other provisions of this chapter, accessory dwelling units shall be located in such a manner so as not to conflict with the equestrian setback standards of adjoining properties.” 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.” Thus, equestrian setback standards of adjoining properties may not impede an ADU application. Additionally, ADUs created pursuant to Government Code section 65852.2, subdivision (e) must be ministerially approved notwithstanding any standards pursuant to subdivisions (a)-(d). Therefore, the City must amend the Ordinance to comply with State ADU Law. Please note that Government Code section 65852.2, subdivision (a)(1)(D)(viii), provides that local building code requirements remain applicable to the construction of ADUs. If the City adopted the equestrian setback standard to comply with building code requirements, please inform HCD so that we may further review this finding.
- 18.38.050 A. – *Timeline* – The Ordinance states, “The City shall act on the building permit... within 60 days...” However, Government Code section 65852.2, subdivision (a)(3)(A), requires that “the permitting agency shall **either approve or deny** the application....within 60 days.” (Emphasis added.) Additionally, if the ADU application is submitted with a *proposed* primary dwelling, the ADU or JADU application may be delayed until the permitting agency approves the primary dwelling application. The ADU application; however, must be considered without discretionary review or hearing.

Subdivision (a)(3)(B) states, “If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subparagraph (A), the permitting agency shall, within the time period described in subparagraph (A), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.” Therefore, the City must review current Government Code section 65852.2, subdivision (a)(3) and amend the Ordinance accordingly.

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 Manager