

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

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February 26, 2024

David Martin, Community Development Director
Planning Department
City of Santa Monica
1685 Main St
Santa Monica, CA 90401

Dear David Martin:

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

Thank you for submitting the City of Santa Monica (City) accessory dwelling unit (ADU) Ordinance No. 2742 (Ordinance), adopted April 24, 2023, 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 and 65852.22 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 March 27, 2024.

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

1. 9.31.025 E. – “*Procedures*” – The Ordinance states “An application to create an ADU or JADU submitted with a permit application to create a new dwelling on the parcel shall be acted upon when or before the application for the new dwelling is acted upon. An application to establish or construct an ADU or JADU on a parcel that contains an existing single-unit, or multiple-unit dwelling shall be deemed approved if not acted on within 60 days from the date that the application is complete....” However, Government Code section 65852.2, subdivision (a)(3), states that the local agency “shall either approve or deny” an ADU application. Subdivision (a)(3)(B) also requires that in denying an ADU application, the permitting agency must provide “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...” Therefore, the City must amend the Ordinance following these provisions to comply with State ADU Law.

2. 9.31.025 F. – *Zoning* – The Ordinance states, “An ADU or JADU that meets the requirements of this Section may be established on any legal parcel that is zoned to allow for single-unit or multiple-unit dwelling.” However, Government Code section 65852.22, subdivision (a)(1), requires that local ordinances “Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.” Therefore, junior accessory dwelling units (JADUs) are only allowed on lots zoned for single-family residences. The City must amend the Ordinance to comply with State JADU Law and amend to corresponding zoning tables in its Ordinance.
3. 9.31.025 F and G.1 – *Unit Allowance* – The Ordinance states that “no more than one ADU and one JADU is permitted per parcel” on lots 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 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 “[o]ne 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 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” or “one of” to indicate only one or another would be applicable to the exclusion of the other. Therefore, limiting single-family lots to one ADU would prevent property owners from creating ADUs by-right under subdivision (e)(1). The City must amend the Ordinance to comply with State ADU Law.
4. 9.31.025 G.1.a and b – *“Attached” and “Detached”* – The Ordinance broadly defines an attached unit as both “newly constructed as an addition” and a unit “within the footprint of a proposed single-family dwelling.” It later defines a detached unit both as a “newly constructed” unit and as a unit created “by converting floor area of a legal existing detached accessory structure.”

However, Government Code section 65852.2, subdivision (a)(1)(D)(iii), describes an ADU as “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.” Thus, State ADU Law clearly delineates between units that are created from existing space (both within the primary dwelling and detached accessory structures) pursuant to Government Code section 65852.2, subdivision (e)(1)(A), new construction detached units up to 800 square feet per subdivision (e)(1)(B), and new construction units (either attached or detached) subject to local design standards per subdivision (a). The “attached” and “detached” definitions confuse the distinction between the types of units available in State ADU Law. The ambiguity created in the definitions may cause uncertainty as to which provision of statute, either subdivision (a) or (e) would apply in an ADU application. Therefore, the City should amend these sections to reflect the categories of units as they appear in State ADU Law to promote clarity.

5. 9.31.025 G.2.a and I.2.b – *Detached Multifamily Accessory Structures* – The Ordinance allows “At least one ADU, or up to 25% of the existing multiple-unit dwelling total unit count, whichever is greater, may be established or constructed by converting floor area within an existing multiple-unit dwelling or existing detached legal accessory structures.” It later states “ADUs may be established within existing residential portions of legal detached accessory structures pursuant to (G)(2)(a) and (b), above.”

However, Government Code section 65852.2, subdivision (e)(1)(C), permits conversion of “portions of existing **multifamily dwelling structures** that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.” (emphasis added) Thus, units converted pursuant to subdivision (e)(1)(C) may only be created in areas within the multifamily dwelling structure and not in detached accessory structures. Therefore, the City must amend the Ordinance to comply with State ADU Law.

6. 9.31.025 G.3- *Additional Detached ADU* – The Ordinance states “In addition to any ADU permitted pursuant to G.1.a. and b., above, one additional detached ADU may be constructed or established in conjunction with an existing or proposed single unit dwelling as described below...” It then requires that such a unit be “used as a rental unit subject to a deed restriction in a form approved by the City Attorney.”

The Ordinance offers an additional ADU within the Single-Unit Residential zoning district if an applicant agrees to additional requirements. Pursuant to

Government Code section 65852.2, subdivision (g), the City may adopt less restrictive requirements for the creation of ADUs. Offering an additional ADU beyond what is mandated in subdivision (e) would be less restrictive. However, the Ordinance does not permit all by-right combinations provided by subdivision (e). (See “Unit Allowance” finding above.) The City must meet the minimum threshold number of allowable ADUs before it may implement this Ordinance section.

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....” The requirements for use as a rental unit, and recordation of a deed restriction are not provided by Government Code section 65852.2 and therefore may not be imposed as a condition for approval of an ADU application. This Ordinance provision may only apply on the additional ADU following an amendment pursuant to the “Unit Allowance” finding above.

Additionally, a “form approved by the City Attorney” is not an objective standard; subdivision (a)(1)(B)(i), requires “objective standards on accessory dwelling units” which subdivision (j)(7) define 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.” This clause would therefore also be inconsistent with State ADU Law. Therefore, the City must amend the Ordinance to comply with State ADU Law.

7. 9.31.025 H.1.a – “Attached JADU” – The Ordinance states “An attached ADU or JADU may be located either in the front or rear half of the parcel.” However, the term “attached” may be understood to mean “new construction attached”, which would be inconsistent with State JADU Law. Government Code section 65852.22, subdivision (a)(4), requires that local ADU ordinances “Require a permitted junior accessory dwelling unit to be constructed within the walls of the proposed or existing single-family residence. For purposes of this paragraph, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” JADUs may only be created within the proposed or existing single-family structure and may not be created as a new-construction addition. The City must amend the Ordinance to remove the reference to JADUs.

8. 9.31.025 H.1.b. and L.1 – *Detached ADU Location* – The Ordinance states “A detached ADU shall be located on the rear half of a parcel.” It later states, “An ADU or JADU shall not be permitted within the front setback.” 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.” Furthermore, 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, requiring ADU placement at the rear of a parcel is inconsistent with State ADU Law. The City must amend the Ordinance to comply with State ADU Law.

Although Ordinance 9.31.025 section P exempts “detached or attached ADU with a floor area of up to 800 square feet, side and rear setbacks of at least 4 feet, and a height of no more than 16 feet” from development standards, the City should add a clarifying reference to section (P) in sections (H)(1)(b) and (L)(1).

9. 9.31.025 H.1.d and e, H.2.b and c – *“Reverse Corner” and “Through Parcels”* – The Ordinance states, “On a reverse corner parcel, an ADU or JADU shall not be located nearer to the street side parcel line of such corner parcel than one-half of the front setback depth required on the key parcel, nor be located nearer than 4 feet to the side parcel line of any key parcel.” It later states, “On a through parcel, an ADU or JADU shall not project into any front setback except as provided under subsection K. below. Pursuant to Section 9.04.110B., the front setback borders the street primarily used as frontage by the majority of neighboring parcels.”

However, Government Code section 65852.2, subdivision (a)(1)(D)(vii) states, “No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.” Subdivision (e)(1)(B) requires no more than “four-foot side and rear yard setbacks.” Furthermore, 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.” The requirements as stated may apply location restrictions in a way that would be inconsistent with the front setback exceptions mentioned in subdivision (c)(2)(C).

Regardless of whether the parcel is a “reverse corner” or “through” parcel, the City must only apply setback and unit placement requirements that are prescribed in Government Code section 65852.2. Therefore, the City must amend the Ordinance to comply with State ADU Law.

10. 9.31.025 I.1 – “*Attached*” vs “*Conversion*” – The Ordinance offers only two categories for ADUs with single-family primary dwellings, a “Detached” category in I.1.b and “Attached” category in I.1.a: “Attached ADU. An ADU that is established by converting floor area of an existing single-unit dwelling that is located in the front setback may only expand the footprint of the single-unit dwelling up to 150 square feet into the front setback to accommodate ingress and egress. An ADU that is established by converting floor area of an existing single-unit dwelling that is not located within the front setback may expand the footprint beyond 150 square feet up to the total size permitted under subsection J below.” There is no provision in this Ordinance section for the establishment of an ADU in an attached accessory structure. Government Code section 65852.2, subdivision (e)(1)(A)(i), provides for the creation of ADUs within the “existing space of a single-family dwelling or accessory structure...” State ADU Law does not qualify the accessory structure as either attached or detached. Therefore, the City must amend the Ordinance to comply with State ADU Law.

11. 9.31.025 I.1.a – “*Attached*” and *Expansion* – The Ordinance states “Attached ADU. An ADU that is established by converting floor area of an existing single-unit dwelling that is located in the front setback may only expand the footprint of the single-unit dwelling up to 150 square feet into the front setback to accommodate ingress and egress.” The provision appears to follow Government Code section 65852.2, subdivision (e)(1)(A), which states that ADUs “may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure.” Subdivision (e)(1)(A) allows for an expansion of 150 square feet for ingress and egress only for an existing accessory structure. The subdivision does not permit an expansion to apply to the existing single-family dwelling unit. The City must amend the Ordinance accordingly.

Additionally, the City titled this section as “Attached ADU” but proceeds to describe ADUs created within the primary residence or accessory structure pursuant Government Code section 65852.2, subdivision (e). ADUs created

within a primary residence or accessory structures are called “conversions.” To avoid confusion the City should amend the Ordinance to use the more appropriate term “conversion” rather than “attached ADU”.

12. 9.31.025 I.1.b.ii and iii– *Attached Accessory Structure* - The Ordinance states “Notwithstanding the size limitation in subsection (J), an ADU that is established by converting floor area of a legal existing accessory structure may expand the footprint of the existing accessory structure at least 150 square feet to accommodate ingress and egress.” The Ordinance only allows this expansion when detached accessory structures are converted to ADUs. However, Government Code section 65852.2, subdivision (e)(1)(A), also provides for the expansion of ADUs created from existing accessory structures which may be attached or detached to the primary single-family dwelling. Therefore, the City must amend to Ordinance to allow for this provision.
13. 9.31.025 I.1.c. – *JADUs in Attached Garages* – The Ordinance states “A JADU that is constructed or established by converting floor area of an existing single-unit dwelling must be contained entirely within the footprint of the single-unit dwelling.” However, current Government Code section 65852.2, subdivision (a)(4), states that JADUs must be “within the walls of the proposed or existing single-family residence. For purposes of this paragraph, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” Therefore, the City must amend the Ordinance to permit JADUs in attached garages.
14. 9.31.025 I.2.a – *Enclosure* – The Ordinance allows ADU conversion “within the **residential** portions of existing multiple-unit dwellings that are not used as livable space **and are enclosed on at least 3 sides**, such as storage rooms, boiler rooms, passageways, attics, basements, or garages....” However, Government Code section 65852.2, subdivision (e)(1)(C), allows conversion “within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.” As written, the restriction of conversion only to residential portions of an existing multiple-unit dwellings and only for spaces enclosed on at least three sides is inconsistent with State ADU Law. Therefore, the City must amend the Ordinance to remove the bolded language above.
15. 9.31.025 J.1. - *Minimum Efficiency Size* – The Ordinance states “The minimum size of an ADU or JADU is 220 square feet of floor area.” However, Government Code section 65852.2, subdivision (j)(1), allows an efficiency unit, and (j)(3) refers to the definition of efficiency unit in Section 17958.1 of the Health and Safety Code. This definition provides for a minimum of 150

square feet. Therefore, the City must amend the Ordinance to comply with State ADU Law.

16. 9.31.025 N.2. – *Step back* – The Ordinance states “Within the R1 District, an attached ADU or JADU located entirely or partially on the second story of a single-unit dwelling shall comply with all applicable step back requirements set forth in Section 9.07.030.” 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 amend the Ordinance to note the exceptions.
17. 9.31.025 P – *Exception Clause* – The Ordinance states “Notwithstanding anything set forth herein, the development and design standards set forth in this Section shall not preclude the establishment of a detached or attached ADU with a floor area of up to 800 square feet, side and rear setbacks of at least 4 feet, and a height of no more than 16 feet.” However, Government Code section 65852.2, subdivision (c)(2)(D), specifies a height of 16, 18, 20 or 25 subject to the provisions therein. The City must amend the Ordinance to comply with State ADU Law.
18. 9.31.025 S. – *JADU Rental Terms* – The Ordinance states “...an ADU or JADU shall not be used for rentals of terms of 30 days or less.” Government Code section 65852.2, subdivision (a)(8) states, “A local agency may require that the property may be used for rentals of terms longer than 30 days or longer.” However, this requirement applies only to ADUs and not to JADUs. Government Code section 65852.22, subdivision (a) states that, “Notwithstanding Section 65852.2, a local agency may...provide for the creation of junior accessory dwelling units...” Therefore, the City must amend the Ordinance to comply with State JADU 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 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,

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

Jamie Candelaria
Senior Housing Accountability Unit Manager
Housing Policy Development Division