

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

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December 18, 2023

Alice Tieu, Associate Planner
Community Development Department
City of Westminster
8200 Westminster Blvd.
Westminster, CA 92683

Dear Alice Tieu:

RE: Letter of Technical Assistance: City of Westminster ADU Ordinance

On March 3, 2023, the California Department of Housing and Community Development (HCD) provided written findings of non-compliance to the City of Westminster (City) accessory dwelling unit (ADU) Ordinance Number 2572 (Ordinance). On March 31, 2023, the City submitted its written response to HCD's findings. HCD appreciates the City's efforts toward understanding and complying with State ADU Law and, at the City's request, is providing this letter to formally respond to comments provided in the March 31, 2023 letter.

For reference and convenience, HCD's original finding is included in italicized font, followed by the City's response in italicized font, followed by HCD's current response in regular font.

Responses to Comments**1) HCD's Original Finding**

The Ordinance states that "a JADU must be within a residential or mixed zone." However, Government Code section 65852.22 states that a local agency "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, the City must amend the Ordinance to allow for JADUs only in residential lots zoned for single-family residences.

City's Comment

"It is our understanding that the law relating to ADUs and JADUs is meant to encourage housing and that the city may adopt less restrictive requirements for the creation of these types of units. (See Gov. Code § 65852.2(g).) The Westminster Municipal Code allows the construction of a JADU within the walls of an existing or proposed single-family residence. (WMC § 17.400.135.C.1.) In Westminster, there

are single-family residences located in zones other than the single-family residential zone. It was therefore the desire of the City to allow a JADU to be built in any single-family residence, regardless of the zone in which it was located. We do not see this provision as being inconsistent with state law.”

HCD’s Follow-up Response

Government Code section 65852.22, subdivision (a), states that “a local agency may, by ordinance, provide for the creation of junior accessory dwelling **units in single-family residential zones**, and subdivision (a)(1) reiterates that “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.” (Emphasis added.) This contrasts with the language in Government Code section 65852.2, which authorizes a local agency to provide for the creation of ADUs “in areas **zoned to allow** single-family or multifamily dwelling residential use.” (Emphasis added.)

The City cites Government Code section 65852.2, subdivision (g), which does not limit a local agency to adopt less restrictive requirements. However, HCD notes that the applicability of the subdivision is limited and only references section 65852.2. Further, Government Code section 65852.22, subdivision (a), states, “Notwithstanding 65852.2, a local agency may, by ordinance....” Therefore, JADUs may only be allowed in single-family zones regardless of the City’s desire to be less stringent.

2) HCD’s Original Findings

“Section 4.17.400.135 B.3.a – Number of ADUs – The Ordinance states that for lots with an existing or proposed single-family dwelling, one ADU may be on the lot. However, Government Code section 65852.2, subdivision (e)(1), states that a local agency shall ministerially approve an application to create any of the following ADUs listed from subdivision (e)(1)(A) through (D). Subdivision (e)(1)(A) allows for the creation of one ADU and one Junior ADU (JADU) within an existing or proposed space of the single-family dwelling, and subdivision (e)(1)(B) allows for one detached 800 square foot ADU with a proposed or existing single-family dwelling. The City must amend its Ordinance to allow for each as well a combination of subdivision (e)(1)(A) and (B) ADUs.

“Section 4.17.400.135.B.19 – Single Family Dwelling – The Ordinance states that “on a lot with a proposed single-family dwelling...up to one detached ADU may be constructed, or one ADU may be constructed within the single-family residence.” However, Government Code section 65852.2, subdivision (e)(1), states that a local agency shall ministerially approve an application to create any of the following ADUs listed from subdivision (e)(1)(A) through (D). Subdivision (e)(1)(A) allows for the creation of one ADU and one JADU within an existing or proposed space of the single-family dwelling, and subdivision (e)(1)(B) allows for one detached ADU. The City must amend its ordinance to allow for a combination of subdivision (e)(1)(A) and

(B) ADUs.”

City’s Comment

“With respect to your [above quoted] bullet points, please be advised we are analyzing how to best address these issues. The City fully intends to comply with Government Code section 65852.2(e) as written. We are aware, however, that as of July 2022 HCD reversed its interpretation of this section although there was no change in the statutory language. We are therefore asking you to provide the reasoning and justification for HCD’s change in position as the legislative history does not support this changed interpretation.”

HCD’s Follow-up Response

HCD regularly reviews the ADU Handbook to ensure that it aligns with the legislative intent expressed in Government Code section 65852.150. In doing so, HCD found that Government Code section 65852.2, subdivision (e)(1), which states that “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...” (emphasis added), to mean that if “any” are allowed, then “all” are allowed as well. We noted that the Legislature, in creating the list, did not use “or” nor “one of” to indicate only one or the other would be applicable to the exclusion of the other.

Paragraph (1) requires that “any” of the following are required: “(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling....” The number of ADUs to be permitted within the lot is set forth in subparagraph (A), and then clauses (i) - (iv) form conditions by which both an ADU converted from existing or proposed space or an accessory structure, as well as a JADU, converted from existing or proposed space, can mutually co-exist. Clause (i) states, “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....” Had the Legislature construed the sentence with “and” instead of “or,” it would cause clause (i) to potentially conflict with clause (iv).

Additionally, paragraph (1), 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. HCD indicated as much in the July 2022 Handbook update and has consistently provided findings of violation to jurisdictions with unit maximums or other restrictions that would preclude such combinations.

Conclusion

HCD thanks the City for its efforts in better understanding State ADU Law and for the spirit of partnership that has guided its communications with HCD. HCD welcomes the opportunity to further 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 that reads "Jamie Candelaria". The script is fluid and cursive, with the first letters of each word being capitalized and prominent.

Jamie Candelaria
Senior Housing Accountability Unit Manager
Housing Policy Development Division