

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

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March 17, 2022

Barry Curtis
Economic and Development Services Director
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Dear Barry Curtis:

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

Thank you for submitting the City of Costa Mesa's (City) accessory dwelling unit (ADU) ordinance No. 2021-03 ("the Ordinance") adopted March 2, 2021, 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 April 15, 2022.

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

- **Section 13-35 (A)(1) – *Omitted Reference to Multifamily*** – The Ordinance lays out its purpose to ensure that "...ADUs and Junior ADUs remain as an accessory use to a single-family residence...." The Ordinance omits mention of multifamily dwellings. Government Code section 65852.2, subdivision (a)(1), states that "[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." Multifamily buildings are also considered to be primary buildings for the purposes of creating ADUs. The City should change the reference to "a single-family residence" to "a single-family or multifamily residence."
- **Section 13-35 (A)(3)(c) – *Definitions*** – The Ordinance states that "a structure is considered 'existing' if a building permit was issued and finalized at least two years before an application is submitted under this section...." However, defining whether a structure is "existing" based on when it was permitted rather than whether it actually exists would prohibit certain actions. For example, converting

an ADU from an existing primary dwelling or existing primary accessory structure, as allowed under Government Code section 65852.2, subdivision (e), would be prohibited by the Ordinance if it is within two years of when the primary structure was “finaled.” Moreover, in addition to “proposed” and “existing” structures, it would create a third category of structures that are in limbo because they were permitted less than two years prior. The Ordinance effectively creates a two-year waiting period before the homeowner may apply for an ADU. Therefore, the definition must be removed from the Ordinance.

- Section 13-35 (A)(3)(d) – *Definitions* – The Ordinance states that “the terms ‘single-family dwelling’ and ‘multifamily dwelling’ exclude all garages, carports, and similar structures, regardless of whether such structures are attached or detached from the dwelling.” Government Code section 65852.2, subdivision (a)(1)(D)(iii), refers to “the accessory dwelling unit [that] is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses,” and Government Code section 65852.22, subdivision (a)(4), states that a JADU must be “constructed within the walls of the proposed or existing single-family residence.” HCD has determined that a single-family residence includes an attached garage, as cited in the ADU Handbook of December 2020 on page 18. The definition as it appears in the Ordinance would impact the creation of a JADU within a single-family residence that includes an attached garage. Therefore, the City should remove the reference to garages as an ‘excluded’ area within a single-family residence.
- Section 13-35 (A)(3)(e) – *Definitions* – The Ordinance states that “a “multifamily dwelling” is a dwelling (excluding any ADU or Junior ADU) within a multifamily dwelling structure, including detached single-family homes where there is more than one (1) primary dwelling unit on a lot.” HCD has determined that, as quoted from the ADU Handbook of December 2020 on page 21, “for the purposes of state ADU law, a structure with two or more attached dwellings on a single lot is considered a multifamily dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings for the purposes of state ADU law.” As written, the Ordinance would conflict with state law on the issue of JADUs, as JADUs are not permitted within multifamily buildings and multiple single-family homes on one lot would therefore be ineligible. Therefore, the City should revise its definition of a “multifamily dwelling.”
- Section 13-35 (B)(4)(b)(ii and iii) – *Setback Requirements* – The Ordinance states that detached ADUs on multifamily lots “shall be no taller than sixteen (16) feet in height, and shall have at least four (4) feet of side and rear yard setbacks....” However, this would be impermissible in the case of converted units. Government Code section 65852.2, subdivision (a)(1)(D)(vii) states that “[n]o 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.” The City must add language noting that converted units are excepted from the setback limitations.

- Section 13-35 (B)(4)(b)(ii), (B)(4)(b)(iii), (B)(5)(b) – *Multifamily ADU Size Limitations* – The Ordinance states, in multiple sections, that the maximum size of detached ADUs for multifamily dwellings “shall not exceed 800 square feet,” and nowhere does the Ordinance mention conversions made in detached accessory structures. However, the statute provides for different size maximums for different kinds of ADUs built with multifamily buildings:
 - One new construction *attached* ADU may be built with a multifamily building under Government Code section 65852.2, subdivision (a), and be subject to a maximum size established in subdivision (c)(2)(B), which states that “a local agency shall not establish by ordinance... a maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following: (i) 850 square feet [or] (ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom....” Such a unit would also be subject to subdivision (a)(1)(D)(iv), which states, “If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.” Be advised that HCD considers that the 50-percent size limitation for such a unit may be based on the average size of a multifamily unit rather than the multifamily building’s total floor area.
 - New construction *detached* ADUs may be built under Government Code section 65852.2, subdivision (e)(1)(D), which allows “not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling....” Such units are subject to a maximum size, as permitted in subdivision (a)(1)(D)(v), of no less than 1,200 square feet.
 - Conversions of detached accessory structures may not be limited to a maximum size, as converted units are created under Government Code section 65852.2, subdivision (e), which exempts such units from local development standards like size maximums.

The City should use these references to establish maximum sizes for ADUs with multifamily buildings.

- Section 13-35 (D)(4)(b) – *Development Standards – Utilities* – The reference for JADUs is noted as subsection D.8, where it should be C.8. Please correct what appears to be a typographical error.
- Section 13-35 (D)(8)(b) – *Corner lot setbacks* – The Ordinance states that “an ADU on a corner lot shall maintain a minimum setback of ten feet from the public right of way or be consistent with the existing setback distance of the main residential structure, whichever is less.” However, Government Code section

65852.2, subdivision (e)(1)(B), states that setbacks of more than 4 feet shall not be required for side or rear lot lines, and subdivision (a)(1)(D)(vii) states that “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.” HCD has determined that the four-foot side setback includes the side of a corner lot. Therefore, the City must remove this bullet point.

- Section 13-35 (D)(10) – *Exterior Stairway* – The Ordinance requires that “an exterior stairway to a second-floor ADU shall be facing the interior of the lot and shall not be readily visible from the public right-of-way.” This is impermissibly restrictive. 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), which applies to converted units created on the second floor. Furthermore, the term “readily visible” is subjective, and the City’s compliance review of an exterior stairway may be a discretionary process in violation of Government Code section 65852.2, subdivision (a)(4), which requires “only ministerial provisions for the approval of accessory dwelling units....” This would unreasonably restrict second floor units on corner lots, on lots with a rear property line facing a street, or on homes where a side-facing entry is most feasible. The City must remove this section.
- Section 13-35 (D)(11)(c) – *Architectural Standards – Junior ADUs* – The Ordinance requires that JADUs “shall be compatible in exterior appearance with the primary unit....” However, Government Code section 65852.22, subdivision (h)(1), defines a JADU as a unit that is...contained entirely within a single-family residence. As JADUs are created entirely within the single-family residence, there should be no architectural change to the structure’s exterior. Therefore, the City should remove this section.
- Section 13-35 (D)(12)(a) – *Aesthetic Requirements* – The Ordinance states that “when a garage is converted to an ADU, if the façade of the converted garage is visible from a public right of way, the façade must have substantial articulation in terms of design and architectural features, or substantial landscaping, or some combination thereof to improve aesthetics....” However, local development standards like façade articulation provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created in converted garages, which are created under Government Code section 65852.2, subdivision (e)(1)(A). Therefore, the City must remove this section.
- Section 13-35 (D)(13) – *Entry and Walkways* – The Ordinance requires that a “walkway leading to an ADU shall be hardscaped and connect to the driveway or the public sidewalk.” This appears to be requiring a passageway. However, per

Government Code section 65852.2, subdivision (a)(1)(D)(vi), “No passageway shall be required in conjunction with the construction of an accessory dwelling unit.” Therefore, the City must remove this reference.

- Section 4 – *Land Use Matrix* – The land use matrix lacks a substantial amount of information – it does not indicate which zones allow single-family and/or multifamily development, nor does it include the allowances or definitions of the zones. Please point HCD to the part of the City’s municipal code where this information is clarified.
- Section 5 (d) – *Parking* – The Ordinance requires that “parking for ADUs and JADUs be provided per the requirements of Section 13-35....” However, as noted in Government Code section 65852.22, subdivision (b), “An ordinance shall not require additional parking as a condition to grant a permit” for a JADU. The City must remove the reference to JADUs here to comply with statute.
- Section 6, 13-261.6. (a)(2) – *Fee Structure* – The Ordinance states that “the fees for ADUs and JADUs shall take into consideration the fees charged for apartments and shall not violate Government Code 65852.2, as it may be amended from time to time.” However, the fees for JADUs are also governed by Government Code section 65852.22, not exclusively by section 65852.2. The City should amend this language to comply with statute.

In these respects, revisions are necessary to comply with statute. HCD will consider any written response to these findings, such as a revised ordinance or a detailed plan to bring the Ordinance into compliance with law by a date certain, before taking further action authorized pursuant to Government Code section 65852.2. Please note that HCD may notify the Attorney General’s Office in the event that the City fails to take appropriate and timely action under section 65852.2, subdivision (h).

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 ADU Law. Please contact Mike Van Gorder of our staff, at (916) 776-7541 or 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 blue ink, appearing to read 'D. Zisser', with a long horizontal line extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability