

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

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April 27, 2023

Omar Dadabhoy, Community Development Director
Planning & Building
City of Fountain Valley
10200 Slater Avenue
Fountain Valley, CA 92708

Dear Omar Dadabhoy:

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

Thank you for submitting the City of Fountain Valley (City) accessory dwelling unit (ADU) Ordinance No. 1597 (Ordinance), adopted February 7, 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 sections 55852.2, 65852.22, and 65852.26 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 May 26, 2023.

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

- Section 21.08.055 (a)(4) – *Zoning* – The Ordinance states, “Accessory Dwelling Unit(s) shall be permitted on a residentially zoned parcel...” However, Government Code section 65852.2, subdivision (a)(1) and (a)(1)(D)(ii), requires ADUs “within areas zoned to allow single family or multifamily use”. Referring only to “residentially zoned” parcels may inadvertently omit mixed use zones. To promote clarity, the City should rewrite this section to mirror State ADU Law.
- Section 21.08.055 (a)(5)(B), (b)(5)(B), (b)(13) – *Height Allowance* – The Ordinance describes a unit subject to Government Code section 65852.2, subdivision (e)(1)(B), in several different situations. Each reference includes a height maximum of 16 feet. However, Government Code section 65852.2, subdivision (e)(1)(B), directly refers to subdivision (c)(2)(D), which increases height maximums under certain conditions. The City must amend the language to reflect current State ADU Law.

- Section 21.08.055 (a)(7), (b)(7) – *Separate Sale* – The Ordinance prohibits separate sale of an ADU. However, Government Code section 65852.26 creates a narrow exception to allow separate conveyance of an ADU to a qualified buyer if the property was built or developed by a qualified nonprofit corporation, among other things. The City must amend the Ordinance to reflect State ADU Law.
- Section 21.08.055 (a)(18), (b)(9), (b)(12) – *Visibility* – The Ordinance prohibits entry for an ADU “onto, or parallel to, a front or side yard public street...” and requires entries to be screened “as not to be visible from the public right-of-way”. It states, “Staircases for two-story attached accessory dwelling units shall be internal...” It later states that detached ADUs “must clearly subordinate by location and size.” However, State law requires that ADUs and junior accessory dwelling units (JADUs), have an independent entry into the unit (Gov. Code, § 65852.2, subd. (e)(1)(a)(ii) and Gov. Code, § 65852.22, subd. (a)(5)). A constraint on the location of an entry door, including provisions necessary to serve entry on a second-floor unit, such as external staircases, are excessively constraining. Furthermore, “clearly subordinate” is a subjective term. Government Code section 65852.2, subdivision (a)(6), states that, “a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units.” The Ordinance also indicates that a detached ADU “must be located in the rear yard.” However, local development standards, regarding location of the ADU as well as visibility, that are 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 these sections.
- Section 21.08.055 (b)(8)(D) – *Accessory Structure* – The Ordinance states “The maximum unit sizes outlined in this section... shall include an existing or proposed garage space if designated for the accessory dwelling unit.” However, Government Code section 65852.2, subdivision (j)(1), defines ADUs as “an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated.” A garage is not included in the ADU definition. Further, in relation to provisions for living, subdivision (j)(4) defines the “living area” to mean the interior habitable space of a dwelling unit, including basements and attics but does not include garages. Therefore, garages may not be included in square footage calculation toward an ADU. The City must remove this provision.
- Section 21.08.055 (b)(8)(A) – *Minimum Size* – The Ordinance permits a minimum size of 220 square feet for an ADU. However, Government Code section 65852.2, subdivision (j)(1)(A), provides that ADUs may be efficiency

units. Government Code section 65852.2, subdivision (j)(3), then defines “efficiency unit” as having the same definition as Section 17958.1 of the Health and Safety Code, which permits a minimum size of 150 square feet. Therefore, the City must amend the language to reflect State statute.

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 provided 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) 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 black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" written in a larger, more prominent script than the last name "West".

Shannan West
Housing Accountability Unit Chief