

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

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April 8, 2022

Les Johnson, Community Development Director
City of Seal Beach
211 Eighth Street
Seal Beach, CA 90740

Dear Mr. Johnson:

**RE: Review of the Seal Beach Accessory Dwelling Unit (ADU) Ordinance under
ADU Law (Gov. Code, § 65852.2)**

Thank you for submitting the City of Seal Beach (City) accessory dwelling unit (ADU) Ordinance 1690 (Ordinance) adopted August 9, 2021, to the California Department of Housing and Community Development (HCD). The Ordinance was received on October 26, 2021. 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 May 8, 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:

- Sec. 11.4.05.115 (B)(3), (B)(6) & (C)(2)(b) – *Missing References to Multifamily Use* – The Ordinance defines “Existing Structure” as “an existing single-family dwelling, duplex or other accessory structure” and a “Primary Dwelling” as “the existing single-family dwelling or duplex”; it also refers to detached new construction ADUs for lots “with a proposed or existing single-family dwelling....” Each of these sections omits multifamily dwellings. Multifamily dwellings are also considered a “primary dwelling” and therefore an “existing structure.” Government Code section 65852.2, subdivisions (a)(1) and (e), both provide for the development of ADUs (detached, attached or conversions) on zones or lots with multifamily dwellings. While the Ordinance addresses ADUs with multifamily buildings in other sections of the Ordinance (e.g., 11.4.05.115 (C)(2)(B); 11.4.05.115 (C)(2)(c); etc.), the definitions as provided create problems of internal consistency. Therefore, the City must add references to multifamily buildings in each of these places.

- Sec. 11.4.05.115 (C)(2)(a)(i) – *JADU Guidelines* – The Ordinance creates guidelines for an approval of an ADU or junior ADU (JADU) within the existing space of a “single-family dwelling or accessory structure,” as outlined in Government Code section 65852.2, subdivision (e)(1)(A)(i). It should be noted that for the purposes of developing JADUs, an attached garage is considered to be “...within the walls of the proposed or existing single-family residence,” as described in the ADU Handbook on page 18. The City should note the allowance of JADUs within attached garages.
- Sec. 11.4.05.115 (E)(2)(b) – *Height restriction* – The Ordinance states that “an Attached ADU shall not exceed the height of the Primary Dwelling....” This contradicts Government Code section 65852.2, subdivision (c)(2)(C), which states that a jurisdiction may not require a height, for either attached or detached dwellings, less than 16 feet. The City must revise the height restriction to allow for at least 16 feet for both detached and attached ADUs.
- Sec. 11.4.05.115 (E)(2)(e)(i) – *Minor Use Permit* – The Ordinance establishes that an ADU “may be considered subject to the City’s minor use permit process....” The minor use permit process is not described further, creating the possibility of a discretionary review. Government Code section 65852.2, subdivision (a)(3), states that “a permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing.” Therefore, the City must clarify the minor use permit process with a description of its objective requirements or remove the reference.
- Sec. 11.4.05.115 (F)(1) – *No JADU Size Minimum* – The Ordinance states that a JADU “shall be a minimum of 220 square feet....” This requirement is laid out again in the table on Page 11, Section 5. However, Government Code section 65852.2, subdivision (c)(2)(A), states that a local agency may not establish a minimum square footage requirement that prohibits an efficiency unit. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code, has a minimum floor area of 150 square feet. (Gov. Code § 65852.2 (j)(3).) The City must amend the Ordinance to allow for an efficiency unit.
- Sec. 11.4.05.115 (F)(5) – *Countertop Appliances* – The Ordinance states that a JADU shall include an efficiency kitchen with “a cooking facility with appliances....” This language matches Government Code section 65852.22, subdivision (a)(6)(A), and is compliant with state ADU Law. However, HCD has noted that some developers and homeowners have misunderstood this to mean that an efficiency kitchen must have *built-in* appliances. Therefore, as a best practice, we encourage the City to note in Sec. 11.4.05.115 (F)(5) that “the appliances may be countertop appliances....”

- Sec. 11.4.05.115 (G) (1) – *Separate Sale* – The Ordinance requires a “declaration of restrictions” that states that “the ADU or JADU shall not be sold, transferred, or assigned separately from the 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.

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 State 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,



David Zisser
Assistant Deputy Director
Local Government Relations and Accountability