

**ORDINANCE NO. O-20-1360-U**

**AN ORDINANCE OF THE CITY OF SAN MARINO EXTENDING INTERIM ORDINANCE NO. 1359 U AND AMENDING THE CITY'S REGULATIONS REGARDING ACCESSORY DWELLING UNITS (ALSO KNOWN AS SECOND UNITS OR ADUS), AND DECLARING THE URGENCY THEREOF**

**WHEREAS**, effective January 1, 2020, several bills (Assembly Bill 68, 587, 881 and SB 13) amended various provisions of State law, including Government Code Section 65852.2, to limit and revise the standards cities may impose on second units (hereafter termed "accessory dwelling units" or "ADUs").

**WHEREAS**, as amended, Government Code Section 65852.2 requires that the City's Accessory Dwelling Unit ordinance incorporate State-mandated standards for certain types of accessory dwelling units.

**WHEREAS**, in addition, Government Code Section 65852.2 allows the City to establish certain objective standards related to height, and certain architectural requirements, which must be applied ministerially, except where a property owner is seeking an exception to such standards. The City currently has standards in place related to parking, height, setback, lot coverage, and architectural requirements, which have functioned to mitigate the impacts of accessory dwelling units on parking, neighborhood density and aesthetics, in addition to providing standards related to fire and life safety necessary for the preservation of the public health and safety, some of which were invalidated by the new state laws.

**WHEREAS**, in the absence of a State-compliant ordinance on January 1, 2020, the City's pre-existing second unit standards would have been considered null and void pursuant to Government Code Section 65852.2(a)(4), and the City would have been required to approve any accessory dwelling unit meeting minimal state criteria.

**WHEREAS**, staff is drafting proposed permanent regulations, which must be studied and revised by staff and considered by both the Planning Commission and City Council at duly noticed public hearings with input by residents at those public hearings. The City Council finds that property owners are likely to submit applications for ADUs before the City's permanent regulations become effective. These applications would cause confusion and ambiguity regarding the applicability of provisions in the City's current ADU regulations, many of which are compliant with the new legislation, and the State standards, with potentially inconsistent and unfair results for City residents. The establishment of these ADUs has the potential to be in conflict with the City's proposed permanent ADU regulations, which will be adopted in compliance with Government Code Section 65852.2 and Section 65852.22 after further study of the appropriate standards and locations for ADUs in San Marino. Therefore, this Ordinance is necessary to protect the public safety, health, and welfare.

**WHEREAS**, on December 11, 2019, the San Marino City Council adopted Interim Ordinance No. O-19-1359 U pursuant to California Government Code Section 65858, which establishes temporary regulations for ADUs and JADUs in the City.

**WHEREAS**, the City Council incorporates by reference and re-adopts the recitals made in Ordinance No. O-19-1359 U regarding the Interim Ordinance as if fully set forth herein; and

**WHEREAS**, Ordinance No. O-19-1359 U is valid for an initial term of 45 days and expires on January 25, 2020. Government Code Section 65858(a) allows the City, after notice and a public hearing, to adopt a first extension of an Interim Ordinance, which may be in effect for a maximum period of an additional ten months and fifteen days.

**WHEREAS**, during the 45-day period City staff has consulted with legal counsel and has begun to study the potential land use, public services, infrastructure, and safety effects of the State Law. Additional consultation and research is necessary to fully evaluate the State Law, including to incorporate any policy guidance or new laws issued by the State of California in early 2020 to clarify State Law. Additional time is also necessary to allow the Planning Commission to review the proposed regulations and make recommendations to the City Council. Unless the City Council extends the Interim Ordinance, the City would be required to either approve new ADUs in locations and under standards that may have negative impacts on the surrounding community, or adopt permanent standards for the entire City without the benefit of a complete inquiry and study of the potential effects. Thus, the City Council finds that this extension of ten months and fifteen days is necessary in order to provide adequate time, resources and policy guidance to update the City's ADU Ordinance.

**WHEREAS**, the City Council considered this matter at a duly noticed public hearing on January 8, 2020, and for the reasons set forth above and in Section 5 below, finds that it would be in the best interest of the City to extend the Interim Ordinance for an additional ten (10) months and fifteen (15) days pursuant to Government Code Section 65858(a).

**WHEREAS**, notwithstanding any other ordinance or provision of the San Marino Municipal Code, no application for a building permit or other land use entitlement shall be accepted for processing or approved for an accessory dwelling unit (or second unit) ("ADU") proposed to be located in a residential zone unless it satisfies all the requirements in this Ordinance.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN MARINO DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1.** The City Council finds that the facts set forth in the Recitals of this Ordinance are true and correct.

**Section 2.** The City shall not approve an application for an ADU unless the ADU satisfies all of the standards provided in this Ordinance.

**Section 3.** Section 23.01.01 of the San Marino Municipal Code is hereby amended by amending the definition of “Accessory Dwelling Unit” and by adding the following definition of Junior Accessory Dwelling Unit to read as follows:

“ACCESSORY DWELLING UNIT.” Accessory Dwelling Unit (also “ADU”, “second unit,” or “granny unit”) shall mean an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include a kitchen as defined in this Chapter, a full bath, and permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel where the primary single-family residence is situated. An Accessory Dwelling Unit also includes an “Efficiency Unit” as defined in Health and Safety Code Section 17958.1 and a “Manufactured Home” as defined in Health and Safety Code Section 18007.

1. “ATTACHED ADU” shall mean a new ADU is constructed as a physical expansion (i.e. addition) to the primary dwelling and is attached to the Single Family Dwelling Unit by one or more common walls.
2. “CONVERTED ADU” shall mean an ADU created within the interior of an Existing Structure that occupies part of the Floor Area of the Existing Structure, as defined in this chapter. A Converted ADU does not include an ADU that would: (a) increase the height of an Existing Structure; (b) require removal of more than 50 Cubic Yards as part of the excavation of an Existing Structure; or (c) increase the Livable Area of the Existing Structure by more than 150 square feet beyond its existing physical dimensions for the purpose of accommodating ingress and egress.
3. “DETACHED ADU” shall mean a new ADU that is located on the property such that the unit does not share any walls with the Single Family Dwelling Unit or Multiple Family Dwelling Unit, and the distance between nearest point of any portion of the unit and the Single Family Dwelling Unit or Multiple Family Dwelling Unit is six feet or more.

“JUNIOR ACCESSORY DWELLING UNIT” (also known as “JUNIOR ADU” or “JADU”) shall have the same meaning as defined in the California Government Code Section 65852.22, as amended from time to time.”

**Section 4.** Section 23.02.25 of the San Marino Municipal Code is hereby amended to read as follows:

“23.02.25: ACCESSORY DWELLING UNITS:

- A. Purpose: The purpose of this section is to comply with Government Code sections 65852.2 and 65852.22 and recent amendments thereto, which allow the City to

enact certain standards for the development of accessory dwelling units in residential zones within the City. It is also the purpose of this section to ensure the availability of affordable housing for family members, students, and the elderly, among others, in the City while mitigating impacts to traffic, utilities, public health and safety and preserving the character of residential neighborhoods.

- B. Application Approval: Any application for an accessory dwelling unit that meets the location and development standards contained in this Section shall be approved by the City following a ministerial review for compliance, and within sixty (60) days after submission of a complete application.
- C. Submittal Requirements and Application Processing:
1. An application for an accessory dwelling unit shall be submitted to the planning and building department concurrently with the submittal of an application for a building permit. The Planning and Building Director shall prescribe the form of application, documents to be submitted and the type of information to be provided by the applicant.
  2. The Planning and Building Director or his/her designee shall issue an accessory dwelling unit building permit if the application conforms to the specific standards set forth in this section.
  3. An application that does not conform to the specific standards set forth in this Section, including the development standards set forth in Section 23.02.25(G) shall not be approved ministerially but shall require design review, a conditional use permit, or variance, as applicable.
- D. Location and Zoning Requirements: An accessory dwelling unit may be located only on residentially zoned lots.
1. One ADU may be constructed on a lot zoned to allow residential use.
  2. One JADU may be constructed on a lot zoned to allow residential use.
  3. One JADU and one ADU may be constructed on a single family residential lot where the JADU and ADU meet the requirements in Government Code Section 65852.2(e).
  4. For fire safety purposes, new ADUs and JADUs may only be located on a residential lot that has: 1) at least a 10 foot wide fire lane within 150 feet of the subject property and 2) a minimum fire flow of 1,000 gallons per minute. This restriction shall not apply to ADUs and JADUs that are exempt from Planning Review, pursuant to Paragraph F 1 of this Section.
  5. Any ADU/JADU legally created shall be governed by the zoning regulations in effect at the time of approval.

- E. All ADUs and JADUs shall be subject to the following restrictions:
1. The development and use of the ADU/JADU shall only be valid and permitted based on the terms established in this Section.
  2. A Deed Restriction shall be required for all ADUs/JADUs. Prior to obtaining a building permit for an ADU/JADU, a deed restriction, approved by the Planning and Building Director or his/her designee and the City Attorney shall be recorded with the County Recorder's Office, which shall include the restrictions and limitations identified in this Paragraph. Said deed restriction shall run with the land and shall be binding upon any successor in ownership of the property. A copy of the final recorded deed restriction shall be filed with the Planning Department prior to the final inspection for the construction of the project, stating that:
    - a. The ADU/JADU shall not be sold separately from the primary residence.
    - b. If the ADU/JADU is rented, it shall not be rented for a period of less than 90 consecutive days.
    - c. Owner-occupancy is required for parcels with a JADU, consistent with Paragraph H 1 of this Section.
    - d. The ADU/JADU shall be restricted to the Livable Area approved at the time of building permit issuance. Any Owner wishing to incorporate the Livable Area of the ADU/JADU back into the primary Dwelling Unit must request termination of the ADU/JADU use under this Section, satisfying all zoning and development standards such as setbacks, floor area and lot coverage.
    - e. A second unit may not have utility services separate from those of the main residential structure on the same property.
    - f. The Owner and all successors in interest in the subject property shall maintain the ADU/JADU in accordance with all applicable regulations established in this Section and any approval granted by the City. Violations and lack of compliance with any provisions of this Section may result in legal action against the property Owner, including revocation of any right to maintain an ADU/JADU on the property as set forth in Paragraph J of this Section and shall be subject to administrative fines and penalties as contained in Article 4 of Chapter 1 of the San Marino Municipal Code.
- F. Process, Review and Fees for ADUs and JADUs.

1. Projects Exempt from Obtaining an ADU Permit. As provided under Government Code Section 65852.2(e)(1), an Owner shall not be required to submit an application for an ADU permit under Paragraph 2 below, and may instead seek building permit approval for the following types of units that are located within residential zones:
  - a. Junior ADUs meeting the requirements of Government Code Sections 65852.2(e)(1)(A) and 65852.22.
  - b. Converted ADUs meeting the requirements of Government Code Section 65852.2(e)(1)(A).
  - c. New construction, Detached ADUs meeting the requirements of Government Code Section 65852.2(e)(1)(B).
  - d. Projects that are exempt from obtaining an ADU Permit under this provision are still subject to tree removal permits, grading permits, and other applicable construction permit requirements.
  
2. Projects Subject to ADU Permit Review and Timelines. The Planning and Building Director or his/her designee shall ministerially review and approve an ADU permit application and shall not require a public hearing, provided that the submitted application is complete and demonstrates that the ADU complies with the requirements contained in this Section. Where an ADU permit application is submitted with an application for a Single Family Dwelling that is subject to design review under Chapter 23 of this code, the ADU permit application will be considered separately without discretionary review or a public hearing, following action on the portion of the project that is subject to Chapter 23.
  - a. ADU permit applications subject to ministerial approval shall be processed within the timelines established by California Government Code Section 65852.2.
  - b. In addition to obtaining an ADU permit, the applicant shall be required to obtain a building permit, tree removal permit, if applicable, and other applicable construction permit requirements prior to the construction of the ADU.

3. Fees and Services

- a. The Owner of an ADU or JADU shall be subject to the payment of all sewer, water and other applicable fees except as specifically provided in California Government Code Sections 65852.2 and 65852.22.
- b. Prior to receiving a building permit, the Owner must submit letters of service availability for water and sewer disposal to the Planning and Building Director.

G. ADU Development Standards. Excepting those ADUs approved under Paragraph F 1, an ADU shall comply with the following development standards:

1. ADUs are limited to a maximum of two bedrooms. Studio and one bedroom ADUs shall not exceed 850 square feet of Livable Area. Two bedroom ADUs shall not exceed 1,000 square feet of Liveable Area.
2. If there is an existing primary dwelling, an Attached ADU shall not exceed 50% of the Liveable Area of the existing primary dwelling on the subject lot, but in no case shall the ADU be less than 150 square feet, nor more than 1,000 square feet in Liveable Area. The Attached ADU also shall not exceed one story or sixteen feet in height, as measured from the datum point, unless it is a JADU that is located entirely within an existing structure.
3. A Detached ADU shall not exceed 1000 square feet of Liveable Area and shall not exceed one story or sixteen feet (16') in height, as measured from the datum point.
4. No setback shall be required for a Converted ADU that is within an existing structure or within a structure constructed in the same location and dimensions as an existing structure. For all other ADUs, the required setback from side and rear lot lines shall be four feet.
5. An ADU shall conform to all lot coverage, floor area, and front yard setback regulations applicable to the Zoning District in which the property is located, except in the following cases:

- a. ADUs or JADUs that are not required to obtain an ADU permit as provided under Paragraph F 1 of this Section.
  - b. Where the application of lot coverage, floor area, or setback regulations would not permit construction of an 800 square foot ADU that is 16 feet in height with four-foot side and rear yard setbacks, the regulation(s) at issue shall be waived to permit such an ADU. An ADU shall include a Kitchen for cooking and eating and other permanent provisions for living and sleeping, including a closet or other reasonable storage area.
6. An ADU shall be similar in the building materials, color, style and form of the primary residence. Architectural details, including, but not limited to, windows, roof pitch and lines, eaves, fascia boards, and trim shall match the primary residence on the property, provided that no ADU shall include any second story balcony or similar open space on the second story.
  7. Exterior lighting shall be shielded or directed so that it does not glare off-site or illuminate the primary residence or any adjacent property.
  8. Windows shall be located to avoid direct line of sight to windows of adjacent properties. Obscured glass and other techniques may be used to avoid direct line of sight.
  9. An ADU shall have a separate exterior access. The exterior access shall be a standard exterior door and shall be located in a manner that will preserve, to the greatest extent feasible, the privacy of the primary residence and any adjoining residences and, to the greatest extent feasible, shall not be visible from the street.
  10. Any common wall separating the accessory dwelling unit from the main building shall be soundproofed. Details of the proposed means of soundproofing shall be submitted with plans for construction.
  11. A permanent foundation shall be required for all ADUs.
  12. In addition to the off-street parking space(s) required for the primary residence, one off-street parking space shall be provided for each ADU, except when:
    - a. The ADU is located within one-half mile walking distance of Public Transit. For purposes of this chapter, "Public Transit" has the same meaning as in Government Code Section 65852.2(j).
    - b. The ADU is entirely within a proposed or existing primary dwelling or other existing structure.
    - c. The ADU is located within an historic district.



- d. On-street parking permits are required but not offered to the occupant of the ADU.
  - e. There is a City-approved and dedicated parking space for a car share vehicle located within one block of the ADU.
13. When the ADU is created by converting or demolishing a garage, carport or covered parking structure, replacement of parking space(s) eliminated by the construction of the ADU shall not be required as long as the ADU remains in use as a legal ADU. If the ADU is removed from use, the Single Family Dwelling Unit shall be required to comply with parking standards established in Section 23.02.03 of this Chapter, as well as all other development standards applicable to the Zoning District.
14. The location of the required parking space(s) shall not obstruct the parking of the primary residence, and shall be a minimum of 20 feet in length. The required parking spaces for the ADU may be uncovered.
- H. JADU Development Standards. Junior Accessory Dwelling Units shall comply with the following:
- 1. The Owner of a parcel proposed for a JADU shall occupy as a principal residence either the Single Family Dwelling Unit or the JADU. The JADU shall be considered to be in compliance with this code only so long as the Owner occupies either the Single Family Dwelling Unit or the JADU.
  - 2. Notwithstanding subparagraph 1, owner-occupancy shall not be required if the Owner is another governmental agency, land trust, or housing organization.
  - 3. The JADU shall be a minimum of 150 square feet and a maximum of 500 square feet of Liveable Area. The floor area of a shared sanitation facility shall not be included in the Liveable Area of the JADU.
  - 4. One JADU may be constructed on a lot zoned for single-family residential use, where there is a Single Family Dwelling Unit existing or proposed to be built on the lot. The JADU must be contained entirely within the walls of the existing or proposed Single Family Dwelling Unit.
  - 5. The JADU shall include an efficiency kitchen meeting the requirements of California Government Code Section 65852.22.
  - 6. A separate exterior entry from the main entrance to the Single Family Dwelling shall be provided to serve a JADU.
  - 7. An interior entry to the main living area shall be provided to serve a JADU. Such interior entry may include a second interior doorway for sound attenuation.

8. A JADU may include separate sanitation facilities, or may share sanitation facilities with the existing structure.
  9. Any exterior improvements associated with the development of a JADU shall conform to zoning regulations and any existing land use entitlements on the property.
  10. No additional parking is required for a JADU.
- I. Termination of Permit and Use for ADUs and JADUs.
1. In his or her sole discretion, the Planning and Building Director may grant an Owner's request to terminate an ADU/JADU permit and deed restriction. The Planning and Building Director shall consider the length of time such permit has been in force, the conditions of approval, the exceptions granted for the permit, and the impact on the City's affordable housing supply.
  2. As a condition of termination, the Planning and Building Director shall require the Owner to make modifications to the property to comply with: 1) current building code requirements, and 2) current development standards in effect at the time the request is made to terminate the use of the ADU or JADU, including but not limited to, setbacks, heights, parking and floor area. The Owner shall apply for a building permit to make such modifications as required by the City's building and fire codes.
  3. In no case shall the ADU or JADU permit be terminated, if the proposed termination would require a variance to exceed the allowable floor area of the Single Family Dwelling Unit.
  4. Where a request is to terminate an ADU that was created from the conversion or demolition of a garage, carport or covered parking structure, the garage, carport, or covered parking structure must be converted back to off-street parking.
- J. Violations and Enforcement for ADUs and JADUs.
1. It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Section. An ADU or JADU will be found in violation of this Section when the dwelling unit has been created without the required City approvals, or does not comply with the standards and deed restrictions established in this Section. Violations are subject to the enforcement penalties and procedures of Article 4 of Chapter 1 of this Code.
  2. In addition to the enforcement penalties and procedures included in Article 4 of Chapter 1 of this Code, the City may pursue any remedies provided by law against the Owner of an ADU or JADU found to be in violation of this

Section, or an ADU or JADU not maintained in conformance with this Section, including:

- a. Revocation of the ADU/JADU permit;
- b. Where an ADU/JADU has been improperly terminated and is being used as habitable space for the Single Family Dwelling Unit, removal of the Floor Area serving as habitable space; and
- c. In any civil enforcement action, the City is entitled to recover attorneys' fees and costs from an Owner who is determined to have an illegal ADU or JADU, or is in violation of this ordinance.

**Section 5. Urgency Finding.** The City Council finds that the circumstances and conditions that led to the adoption of Interim Urgency Ordinance No. O-19-1359 U have not been alleviated as of the date of this Ordinance. As of January 1, 2020, the City's pre-existing ADU regulations are null and void to the extent they conflicted with the amended Government Code Section 65852.2, thereby limiting the City to the application of the few default standards provided in State Law for the approval of ADUs. Interim Urgency Ordinance No. O-19-1359 U was adopted to comply with the minimum standards established by new State Law, while preserving certain unique local requirements that comply with the new state laws. The interim ordinance continues to provide overall direction and clarity for staff and the community in terms of the permitting process for approving ADUs and overall regulations associated with ADUs and JADUs based on new State Law.

The City Council finds the approval of ADUs and JADUs solely on the State default statutory standards, without supplemental local regulations that provide supporting details to comply with State and local requirements, would threaten the character of existing neighborhoods and negatively impact the public safety and welfare of the community. The application of the default standards contained in the State Law may create a conflict with the character of the neighborhoods in which ADUs are built. Accordingly, this extension of Interim Urgency Ordinance No. O-19-1359 U is necessary to protect the public safety, health, and welfare pursuant to Government Code Section 65858 and its urgency is hereby declared.

**Section 6. CEQA Finding.** The City Council finds and determines that this ordinance is exempt from review under the California Environmental Quality Act (CEQA). The ordinance is intended to modify existing local regulatory requirements to be consistent with and implement State and local law which encourage development of ADUs or JADUs, and as such is exempt from CEQA under statutory exemption in Section 15282(h) of the CEQA Guidelines and Section 21080.17 of the Public Resources Code.

**Section 7. Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the

remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 8. Savings Clause. Neither the adoption of this Ordinance nor the repeal or amendment by this ordinance of any ordinance or part or portion of any ordinance previously in effect in the City, or within the territory comprising the City, shall in any manner affect the prosecution for the violation of any Ordinance, which violation was committed prior to the effective date of this ordinance, nor be construed as a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinances.

Section 9. The Mayor shall sign and the City Clerk shall attest to the adoption of this Ordinance and shall cause the same to be published as required by law.

**PASSED, APPROVED AND ADOPTED THIS 8<sup>th</sup> day of January, 2020.**

  
GRETCHEN SHEPHERD ROMEY, MAYOR  
CITY OF SAN MARINO

ATTEST:

  
EVA HETER, CITY CLERK  
CITY OF SAN MARINO

STATE OF CALIFORNIA            }  
COUNTY OF LOS ANGELES       }  
CITY OF SAN MARINO            }        ss

I HEREBY CERTIFY that the foregoing Ordinance No. O-20-1360-U was duly adopted by the City Council of the City of San Marino at a Regular Meeting of the City Council held on January 8, 2020 by the following vote:

AYES:            Council Member Huang, Council Member Jakubowski, Council Member Talt, Vice Mayor Ude, and Mayor Shepherd Romey

NOES:            None

ABSENT:         None

ABSTAIN:        None

  
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EVA HETER, CITY CLERK  
CITY OF SAN MARINO

