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ZA MEMORANDUM NO. 142

December 29, 2022

TO: Office of Zoning Administration
Department of City Planning
Department of Building and Safety
All Interested Parties

FROM: Estineh Mailian, Chief Zoning Administrator, Department of City Planning

SUBJECT: **Implementation of State Law SB 897 & AB 2221 Regarding ADUs and JADUs**

The California Legislature adopted Senate Bill (SB) 897 and Assembly Bill (AB) 2221, both concerning accessory dwelling units (ADUs) and Junior Accessory Dwelling Units (JADUs). These bills take effect on January 1, 2023, and amend Government Code Sections (GCS) 65852.2, 65852.22, and 65852.23, and Health and Safety Code Section 17980.12.

The purpose of this Zoning Administrator's Memorandum (ZA Memo) is to provide a summary of pertinent sections and amendments in these state laws and corresponding implementation in the City of Los Angeles. This summary is for reference and discussion purposes only and is not intended to conflict with state law. It reflects most,

but does not cover all circumstances and may be subject to additional information, interpretation and consideration.

This ZA Memo clarifies the application of the City's Accessory Dwelling Unit (ADU) Ordinance, Los Angeles Municipal Code (LAMC) 12.22 A.33, to meet the requirements of the state ADU laws taking effect on January 1, 2023. Furthermore, this memo supersedes any portion of previously issued ZA Memo 134 "Implementation of 2019 Accessory Dwelling Unit (ADU) Ordinance and State ADU Law" which are in conflict and therefore superseded by state law.

I. Background and Authority

The City's ADU Ordinance No. 186,481 became effective December 19, 2019. Among additional matters, it added LAMC Section 12.22 A.33. This new section includes local development standards and incorporates certain state law development standards and requirements for ADUs and JADUs in GCS 65852.2 and 65852.22.

LAMC 12.22.A.33(a) states the purpose of the ADU Ordinance "is to provide for the creation of ADUs and JADUs consistent with California Government Code Sections 65852.2 and 65852.22, as amended from time to time."

It also states: "It is the intent of the City to retain all portions of this subdivision regarding ADUs and JADUs not in conflict with state law." The ADU Ordinance (LAMC 12.22 A.33(i)) provides the Zoning Administrator with explicit authority to "clarify, amend or revoke any provision of this subdivision as may be necessary to comply with any state law regarding ADUs or JADUs." State ADU law additionally has been amended to clarify that it shall supersede a conflicting local ordinance (65852.2(j)).

The LAMC further provides the Zoning Administrator authority to make interpretations as necessary to be consistent and compatible with state law. LAMC 12.22 A.33(j) states: "This subdivision is not intended to conflict with state law. This subdivision shall be interpreted to be compatible with state enactments."

ZA Memo 134, "Implementation of 2019 Accessory Dwelling Unit (ADU) Ordinance and State ADU Law" was issued on February 27, 2020. ZA Memo 134 did the following:

(1) summarized the development standards and requirements for the different types of ADUs along with JADUs permitted in the City;

(2) outlined the development standards for ADUs and JADUs required to be approved per GC Section 65852.2(e)(1) incorporated by reference in the ADU Ordinance;

(3) described additional state law provisions applicable to ADUs and JADUs but not included in the ADU Ordinance; and

(4) answered common questions related to implementation of the ADU Ordinance and state law.

This ZA Memo analyzes the pertinent amendments made by the two state bills and evaluates them with the current LAMC regulations to determine whether each state amendment requires any further action or local ordinance amendment to meet the requirements in state law. In some cases, changes in the text of state law are clarifications of existing policy more than a substantive change in what the law requires. Those are noted as such and do not require further interpretations or amendments. In instances where the City's ADU Ordinance is silent, unclear, or otherwise inconsistent with the new state ADU amendments, this ZA Memo 142 supersedes and gives guidance on how the stated LAMC provisions can be aligned to implement state law. The state law amendments are grouped by topic and numbered for ease of discussion and understanding.

II. Summary of Pertinent State Amendments & Local Implementation

A. Clarifications on how ADUs may be created

State Law Amendment:

1. Clarifies that a Detached ADU may be created from a detached garage (GCS 65852.2(A)(1)(d)(iii)).

Implementation:

No code amendments needed as this is already permitted by the LAMC.

B. Adjustments to Application Review; Restrictions on Denials

State Law Amendments:

2. Specifies that a local permitting agency's 60 days to act means 60 days to issue an approval or denial (GCS 65852.2(a)(3)(A)).
3. Specifies that the 60 days to approve or deny a permit to create an ADU also applies for permits to "serve" an ADU with utilities or other services (GCS 65852.2(a)(3)(A)).
4. Related to above, creates a new definition for "permitting agency" as any

entity that is involved in the review of a permit for an ADU and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts. (GCS 65852.2(j)(9)).

5. Specifies that these approval/denial timelines apply to ADUs submitted alongside a new multifamily dwelling as well as single-family (GCS 65852.2(a)(3)(A)).
6. Specifies that denials must include a full set of written comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant (GCS 65852.2(a)(3)(B)).
7. Specifies that a demolition permit for a detached garage that is to be replaced with an ADU be reviewed with the application for the accessory dwelling unit and issued at the same time (GCS 65852.2(a)(4)).
8. Specifies that a local ordinance shall not require, and the applicant shall not be otherwise required, to provide written notice or post a placard for the demolition of a detached garage that is to be replaced with an accessory dwelling unit, unless the property is located within an architecturally and historically significant historic district (GCS 65852.2(a)(5)).

Implementation:

The state amendments to application review and restrictions to denials stated above supersede provisions of the LAMC stated below, to the extent they create a conflict with state law, and are hereby adopted to meet the requirements of the new state ADU laws.

Amend LAMC 12.22 A.33(c)(2) and/or other relevant regulations/policies to incorporate the following:

- “[A]cted upon” in LAMC Section 12.22A.33(c)(2), means to approve or deny an ADU application.
- An “application to create an ADU” in LAMC Section 12.22A.33(c)(2), includes an application to serve an ADU (such as a utility service). The 60-day deadline in LAMC 12.22A.33(c)(2) applies to applications.
- LAMC Section 12.22A.33(c)(2), applies to “any entity that is involved in the review of a permit for an ADU and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.”
- Denial of any application to create an ADU must include a full set of written comments to the applicant with a list of items that are defective or deficient and a

description of how the application can be remedied by the applicant (GCS 65852.2(a)(3)(B)). Written plan check or similar corrections issued by the City after the City receives a completed application and which require an applicant to modify its application to meet applicable codes and regulations shall be considered a denial of an application for the purpose of calculating the 60 day deadline to approve or deny an application. This is necessary because the timing and extent to which such corrections are addressed is within the sole control of the applicant and not the City.

- A demolition permit for a detached garage that is to be replaced with ADU must be reviewed with the application for the ADU and issued at the same time. Notwithstanding any other local code provision to the contrary, the applicant shall not be required to provide written notice or post a placard for the demolition of a detached garage that is to be replaced with an ADU, unless the property is located within an architecturally and historically significant historic district.

State Law Amendments:

9. Specifies that the local agency shall not deny an application for a permit to create an ADU due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit (GCS 65852.2(d)(2)).
10. Prevents cities from denying an ADU/JADU permit for an unpermitted ADU based on building code or zoning standards, unless correction is needed to protect the health and safety of occupants or the building is deemed substandard per 17920.3 of the H&S Code (GCS 65852.23 and 17980.12 of the Health and Safety Code).

Implementation:

The state amendments to application review and restrictions to denials stated above supersede provisions of the LAMC stated below, to the extent they create a conflict with state law, and are hereby adopted to meet the requirements of the new state ADU laws.

Amend LAMC 12.22 A.33(h)(4) and/or other relevant regulations/policies to incorporate the following:

- For the purpose of LAMC Section 12.22 A.33(h)(4) only, “nonconforming zoning condition” in Section 12.22 A.33(h)(4) applies to:
 - A physical improvement on a property that does not conform to current zoning standards, and further includes building code violations, and unpermitted structures that do not present a threat to public health and

safety and are not affected by the construction of the accessory dwelling unit; and

- For an unpermitted accessory dwelling unit that was constructed before January 1, 2018, any violation of: (a) building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code, and (b) Government Code Section 65852.2 or any local ordinance regulating accessory dwelling units.
- For the purpose of LAMC Section 12.22 A.33(h)(4) only, “nonconforming zoning condition” shall not include violation of any code where the City makes a finding that correcting the violation is necessary to protect the health and safety of the public or occupants of the structure, or any building that is deemed substandard pursuant to Section 17920.3 of the Health and Safety Code.

C. Limitations on Regulation of ADU Size, Height, and Front Setbacks

State Law Amendments:

11. Specifies that cities may not require a zoning clearance or separate zoning review in order to permit a minimum allowable sized Detached or Attached ADUs (GCS 65852.2(c)(2)(C)).
12. Includes front setbacks on the list of standards local governments may not establish that preclude a 800 SF ADU (GCS 65852.2(c)(2)(C)).
13. Provides a new set of height allowances for ADUs depending on their type and location (GCS 65852.2(c)(2)(D)).

Implementation:

The state amendments to limit regulation of ADU size, height and front setbacks supersede provisions of the LAMC stated below, to the extent they create a conflict with state law, and are hereby adopted to meet the requirements of the new state ADU laws.

Amend LAMC 12.22 A.33(c)(1)(iii), 12.22 A.33 (g)(1), and/or other relevant regulations/policies to incorporate the following:

- Notwithstanding anything to contrary, there shall be no: (1) requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards; or (2) height limitation that does not allow heights for ADUs stated in Government Code Section 65852.2(c)(2)(D), except that no ADU shall exceed two stories where otherwise prohibited by any objective provision pursuant to Chapter 1 of this Code.

D. Fire Sprinklers

State Law Amendment:

14. Specifies the construction of an ADU shall not trigger a requirement for fire sprinklers to be installed in the existing multifamily dwelling (GCS 65852.2(a)(1)(D)(xii)).

Implementation:

The state amendments on requirement of fire sprinklers supersede provisions of the LAMC stated below, to the extent they create a conflict with state law, and are hereby adopted to meet the requirements of the new state ADU laws.

Amend LAMC 12.22 A.33(c)(10), and/or other relevant regulations/policies to incorporate the following:

- Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

E. Restrictions on Local ADU Ordinance

State Law Amendment:

15. Clarifies that jurisdictions may only impose “objective standards” on ADUs through their local ADU ordinance (GCS 65852.2(a)(1)(B)(i) and 65852.2(e)(7). Defines “Objective Standards” to mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal (GCS 65852.2(j)(7)).

Implementation:

LAMC 12.22 A.33(c)(1) and (2) meet these requirements of the new state law by requiring compliance with all applicable “objective provisions” and “objective standards”, respectively. However, the terms “objective provisions” or “objective standards” are not defined.

The state amendments clarifying the imposition of objective standards supersede provisions of the LAMC stated below, to the extent they create a conflict with state law, and are hereby adopted to meet the requirements of the new state ADU laws.

Amend LAMC 12.22 A.33(c)(1) and 12.22 A.33(c)(2), and/or other relevant regulations/policies to incorporate the following:

- For purposes of the ADU Ordinance, “objective provisions” and “objective standards” mean “objective standards” as defined in Government Code Section 65852.2(j)(7).

State Law Amendment:

16. Clarifies that local ADU ordinances are superseded by state ADU law (GCS 65852.2(j)).

Implementation:

No code amendments needed as LAMC 12.22 A.33(i) and (j) already require state law conformance.

F. Owner Occupancy

State Law Amendment:

17. Allows a local ADU ordinance to require owner occupancy for ADUs permitted after 2025, as well as be limited to rentals of more than 30 days (GCS 65852.2(a)(8)).

Implementation:

No code amendments needed. The LAMC does not include a prohibition on owner occupancy and already requires ADUs to be rented for more than 30 days, unless being utilized as part of Home-Sharing of one’s own primary residence pursuant to LAMC 12.22 A.32.

G. Building Code Occupancy

State Law Amendment:

18. Creates an exception to the requirement that ADU ordinances require compliance with local building codes so that the ADU shall not constitute a Group R occupancy change under the local building code, unless certain findings are made (GCS 65852.2(a)(1)(D)(viii)).

Implementation:

The state amendments as they apply to building code occupancy supersede provisions of the LAMC stated below, to the extent they create a conflict with state law, and are hereby adopted to meet the requirements of the new state ADU laws.

Amend LAMC 12.22 A.33(c)(9), and/or other relevant regulations/policies to incorporate the following:

- “[A]ll applicable Building and Residential Codes” as stated in LAMC Section 12.22 A.33(c)(9) means local building code requirements that apply to detached dwellings, except that the construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code (Title 24 of the California Code of Regulations), unless the building official or enforcement agency of the local agency makes a written finding based on substantial evidence in the record that the construction of the accessory dwelling unit could have a specific, adverse impact on public health and safety. Nothing in this clause shall be interpreted to prevent a local agency from changing the occupancy code of a space that was uninhabitable space or was only permitted for nonresidential use and was subsequently converted for residential use pursuant to this section.

H. Parking

State Law Amendment:

19. Clarifies that no parking spaces shall be required for an ADU when on-street parking permits are required but not offered to the occupant of the accessory dwelling unit (GCS 65852.2(d)(1)(D)).
20. Clarifies that no parking spaces shall be required for an ADU that meets the existing criteria if submitted along with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot (GCS 65852.2(d)(1)(F)).

Implementation:

The state amendments to required parking supersede provisions of the LAMC stated below, to the extent they create a conflict with state law, and are hereby adopted to meet the requirements of the new state ADU laws.

Amend LAMC 12.22 A.33(c)(12)(i), and/or other relevant regulations/policies to incorporate the following:

- No parking spaces to be required for an ADU when on-street parking permits are required but not offered to the occupant of the accessory dwelling unit as stated in Government Code Section 65852.2(d)(1)(D).
- An ADU that is “[p]art of the proposed or existing primary residence or accessory structure” as stated in LAMC Section 12.22 A.33(c)(12)(i)(d), includes the circumstance when “a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling

unit or the parcel satisfies any other criteria listed in this paragraph” as stated in Government Code Section 65852.2(d)(1)(F).

I. State Multifamily ADUs

State Law Amendments:

21. Specifies that state law multifamily Detached ADUs (up to 2) may be able to be built concurrently with a new multifamily dwelling (GCS 65852.2(e)(1)(D)).
22. Specifies that creation of state law multifamily Detached ADU(s) (up to 2) shall not trigger any modification for an existing multifamily dwelling that has a side or rear setback of less than four feet.

Implementation:

No code amendments needed. LAMC 12.22.A.33(b)(6) refers to the relevant state law section to approve these ADU Types. Update other relevant policies as necessary to implement these state ADU law changes.

J. Junior Accessory Dwelling Units (JADUs)

State Law Amendments:

23. Clarifies a JADU constructed within the walls of the proposed or existing single-family residence may include an attached garage (65852.22(a)(4)).
24. Specifies that a JADU may have a separate connection to the main dwelling if there is no bathroom (otherwise, this remains optional) (65852.22(a)(5)(B)).

Implementation:

No code amendments needed. LAMC 12.22 A.33(b)(4) requires compliance with 65852.22. Update other relevant policies as necessary to implement these state ADU law changes.

III. Conclusion

The express purpose of the City’s ADU Ordinance is to provide for the creation of ADUs and JADUs consistent with state law, and as amended from time to time. The summary of the recent two state bill amendments to ADUs and JADUs discussed above, and necessary changes to the LAMC mentioned above, assure compliance with and meet the requirements of the state ADU laws.

EM:MG:ds