



July 12, 2019

VIA EMAIL AND U.S. MAIL

Mayor & City Council
City of Merced
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RE: August 5, 2019 City Council Meeting
File No. 19-271 (Ordinance Regarding Accessory Dwelling Units)

To the Mayor and City Council:

Californians for Homeownership is a 501(c)(3) non-profit organization devoted to using legal tools to address California's housing crisis. I am writing as part of our work monitoring local compliance with Government Code Section 65852.2, California's revised law regarding Accessory Dwelling Units ("ADUs").

At your July 1, 2019 meeting, you discussed a draft ordinance that aims to bring the City of Merced into compliance with Section 65852.2, and you continued the hearing on the ordinance to your August 5, 2019 meeting to allow staff to redraft portions of the ordinance. I was impressed by your thoughtful, informed discussion about ADUs and the Legislature's work to facilitate the development of new housing in the form of ADUs. With that in mind, I hope that you will welcome some additional information about the limits on local ADU ordinances under Section 65852.2, which might better inform your discussion on August 5.

While most of the information you received from staff was accurate, the information about garage conversions and replacement parking was not. Staff correctly explained that under Government Code Section 65852.2(a)(1)(D)(x)(II), *new parking* for an ADU must be allowed in a variety of configurations, and the City is not permitted to require that new covered parking be

provided. But they omitted to mention Section 65852.2(a)(1)(D)(xi), which applies the same substantive rule to *replacement parking* when an existing garage is converted or demolished in connection with the construction of an ADU:

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, and the local agency requires that those off-street parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts.

Under this rule, cities are allowed to require replacement parking following a garage conversion, but they may not require that the replacement parking be covered or enclosed in a garage. And a city is not permitted to use other aspects of its development code as an end-run around this limitation. Gov. Code § 65852.2(a)(5) (“No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.”). The City’s current draft ordinance appears to require that replacement parking comply with the City’s standard parking requirements. If the ordinance is adopted in its current draft form, broadly permissive state ADU standards will continue to apply in Merced because the ordinance does not comply with state law. Gov. Code § 65852.2(a)(4) (a city must “apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until [it] adopts an ordinance that complies with [Section 65852.2].”).

The State Department of Housing and Community Development (HCD) has issued guidance to this effect, and has sent non-compliance letters to the small number of cities that have adopted non-complaint ordinances. For example, just a short time ago, HCD sent a letter to the city of Duarte that had this to say about replacement parking:¹

Conversion of a Garage, Carport or Other Parking Structure: When a garage, carport or other parking structure is converted to an ADU, the parking spaces displaced by the conversion must be allowed in any configuration on the lot, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. The purpose of this requirement is to provide flexibility in allowing the ADU. Limiting replacement parking to only enclosed parking spaces, regardless of the number of bedrooms on the property is inconsistent with this requirement. The ordinance should be revised to allow additional configurations of replacement parking as described above.

Most cities have been informed of this replacement parking rule before adopting an ADU ordinance—either by staff or by the public—and have adopted lawful replacement parking rules in their ordinances. The experience of the City of Chula Vista is illustrative. There, city staff originally drafted an ordinance that did not properly account for the replacement parking provisions in Government Code Section 65852.2(a)(1)(D)(xi). At the Chula Vista Planning

¹ www.hcd.ca.gov/policy-research/docs/ordinance-review-letters/duarteADUJul2019.pdf

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Commission's November 8, 2017 meeting, a member of the public raised the same concerns about replacement parking that I raise above. Before the ADU ordinance came before the Chula Vista City Council, staff amended it to comply with Section 65852.2(a)(1)(D)(xi), explaining to the Council that the amendment was necessary to comply with state law. The amendment was incorporated into the final ordinance.

If Merced passes the ADU ordinance in its current form, it risks facing litigation to vindicate the state-law rights of its homeowners to develop ADUs. ADUs—and garage conversions in particular—form an important part of the state's effort to solve the severe housing access and affordability crisis. The development of these new, relatively low-cost housing units has tremendous potential for increasing the supply of naturally affordable housing. And it can help cities meet their RHNA allocations without rezoning. We urge the City pass a revised ADU ordinance that is consistent with its legal obligations.

Sincerely,



Matthew Gelfand

cc: Phaedra Norton, City Attorney (by email to nortonp@cityofmerced.org)