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**Subject:** Fwd: Comments for 11/19/24 City Council Meeting Hearing Item 9a; ADU Ordinance Amendments/Findings  
**Date:** Tuesday, November 19, 2024 8:02:26 PM  
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**Subject:** Comments for 11/19/24 City Council Meeting Hearing Item 9a; ADU Ordinance Amendments/Findings

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Dear Mayor Asatryan and Honorable Councilmembers,

I am a lifelong Glendale resident and homeowner. I am writing to express serious concerns about the City's prohibition on new construction ADUs above detached garages, and the findings drafted by the City Attorney for your consideration to justify this restriction, which HCD has already rejected and deemed to be unsatisfactory.

Pursuant to SB 897, in November 2022 the City amended its ADU ordinance to allow two-story ADUs, recognizing the need for flexibility to meet California's housing crisis. Yet, the City kept its prohibition on new construction ADUs above detached garages without clear justification.

The findings drafted by the City Attorney to justify the ban on new construction ADUs above detached garages rely solely on statutory interpretation without any supporting

facts or evidence, as required by state law. Findings are formal conclusions drawn by a public agency, based on evidence and analysis, to justify a particular decision or action. They provide the rationale for the decision and demonstrate that the agency has considered relevant factors and adhered to legal requirements. In the context of ADU regulations, if a local agency seeks to impose restrictions or prohibitions beyond what state law permits, it must provide substantial evidence to support its position and document this through findings.

Arguing an interpretation of a statute does not constitute the act of making findings. Rather, it is more about presenting a legal argument or opinion on how the statute should be understood or applied. This process may involve analyzing legal texts, precedents and principles, but it does not fulfill the formal requirement of making findings, which is a more structured and evidence-based process mandated by law for certain decisions or actions.

The findings need to demonstrate that allowing new construction ADUs above detached garages poses a specific, evidence-based threat to public health or safety that is not adequately addressed by existing building codes or state regulations. The City cannot justify its ban on new construction ADUs above detached garages solely based on residents' privacy concerns. While privacy is a valid community concern, it is not a sufficient legal basis for restricting ADUs under state ADU law. The law specifically requires that restrictions on ADUs be based on substantial evidence demonstrating that they are necessary to protect public health, safety, or welfare -- not just general community preferences or aesthetic considerations.

The City's legal argument hinges on a narrow interpretation of the statute's language. The City argues that the statute outlines three scenarios for ADUs, namely:

1. Attached to or located within the primary dwelling (including attached garages).
2. Converted from an accessory structure (e.g., detached garages or storage areas).
3. Detached from the primary dwelling, including detached garages.

The City claims they comply with the statute by allowing the three scenarios listed above. Moreover, the City argues that since the statute does not explicitly mandate allowing new construction ADUs on top of an existing or proposed detached garage, the City's ban on such ADUs is consistent with state ADU law. However, statutes do not need to explicitly enumerate every possible scenario if the general language (e.g., "an accessory structure or detached from the primary dwelling, including detached garages") reasonably covers it. By focusing on what is not explicitly mandated, the City risks ignoring the broader flexibility and housing production goals of the statute.

The purpose of the statute and California ADU laws is to promote flexibility and maximize housing options. Prohibiting new construction ADUs above detached garages conflicts with this intent, as it unnecessarily and arbitrarily restricts housing opportunities. The statute specifically includes accessory structures and detached garages in the scope of allowable ADUs, without limiting configurations (e.g.,

conversions only).

The statute allows an ADU to be detached from the primary dwelling and located on the same lot, including detached garages. While it does not explicitly say "new construction above a detached garage," it also does not limit detached ADUs to only one level. The flexibility of placement is implied unless explicitly restricted.

California ADU law prohibits local ordinances from placing unreasonable and arbitrary restrictions on ADUs. A blanket prohibition on new construction ADUs above detached garages could be seen as unreasonable and arbitrary, particularly without clear justification (e.g., safety or infrastructure concerns).

HCD has reviewed our local ordinance and engaged with City staff for months over this issue, and after considering the arguments presented in the resolution findings, they have taken the position that the City's ban on new construction ADUs above detached garages is inconsistent with state law. By adopting the findings drafted by the City Attorney, the City Council will effectively formalize its opposition to the state and invite legal action. Only one other city in all of California has adopted findings in response to an ADU ordinance findings letter. That city is Dana Point in Orange County, and HCD is currently reviewing their findings with action from the state attorney general likely to follow.

I urge you to direct City staff to initiate amendments to the City's ADU ordinance to satisfy all of HCD's findings of non-compliance. Let's align our local ADU ordinance with state law and support our community members in creating much-needed housing.

Furthermore, I urge you to direct City staff to suspend enforcement of the City's ADU ordinance and process ADU applications under state requirements and standards until the City has adopted a compliant ordinance. As HCD's Notice of Violation indicates, non-compliant local ordinances are effectively preempted by state standards, rendering them unenforceable until compliance is achieved.

Thank you,  
Alex Khatchaturian