

**SROUR & ASSOCIATES**  
 Real Estate Development Services Group, Inc.  
 2447 Pacific Coast Highway, Suite 200  
 Hermosa Beach, CA 90254  
 (310) 372-8433 brandon@esrou.com

Date: June 8, 2020  
 To: Planning Commission  
 City of Manhattan Beach  
 From: Brandon Straus  
 Subject: Manhattan Beach Accessory Dwelling Unit (ADU) Ordinance

This memo addresses provisions of the City's interim ADU ordinance that are noncompliant with State law and should be amended when adopting any permanent ordinance.

- 1) The City impermissibly prohibits certain ADUs and JADUs in the Beach Areas that are permitted by right under State law.

Staff Report Attachments I and K indicate that a new or existing Single-Family Residence (SFR) in the Beach Areas is prohibited from having an attached ADU. Attachment K also indicates that an existing SFR in the Beach Areas cannot add a JADU. Each of these prohibitions violates State law.

These ADUs and JADUs are permitted in the Beach Areas by-right under State law

ATTACHMENT I																		
Minimum Dwelling Replacement Options - Beach Area																		
Existing Permitted Development (Includes ADUs) To Be Demolished	Options													Comments				
	SFR	SFR + Detached ADU	SFR + Attached ADU	SFR + Affordable ADU	SFR + Detachable ADU	SFR + Attached ADU + JADU	SFR + Multiple ADUs	SFR + ADU + Multiple ADUs	Two Primary Units	Two Primary Units + ADU	Affordable JADU	Two Primary Units + ADU + JADU	Two Primary Units + Multiple ADUs		Three Primary Units + ADU + JADU			
1 Existing Unit	Yes	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
2 Existing Units	No	Yes	No	Yes	-	-	-	-	Yes	-	-	-	-	-	-	-	-	Replacement pre-empts density max. in MBMC 10.12.030
3 Existing Units	No	Yes	No	No	Yes	No	No	No	No	Yes	-	-	-	Yes	-	-	-	Replacement pre-empts corner walk-street condo max
4 or More Units	No	No	No	No	No	No	No	No	No	No	No	No	No	-	Yes	No	Yes	Replacement pre-empts density max in MBMC 10.12.030

\*Things to Remember:  
 1) "Primary Units" includes apartments and condos  
 2) An ADU can only be a replacement unit in conjunction with an SFR. ADUs cannot be replacement units in conjunction with multiple primary units. A single affordable JADU can be a replacement unit in conjunction with multiple primary units.  
 3) Replacement min pre-empts density max found in MBMC 10.12.030  
 4) All JADUs built as a replacement unit must be "affordable"

ATTACHMENT K														
Addition of ADU/JADU Options - Beach Area														
Primary Units	Options													
	SFR	SFR + Detached ADU	SFR + Attached ADU	SFR + JADU	SFR + ADU + Detached ADU	SFR + Multiple ADUs	SFR + Multiple JADUs	Two Primary Units	Two Primary Units + ADU	Two Primary Units + JADU	Two Primary Units + ADU + JADU	Two Primary Units + Multiple ADUs	Two Primary Units + Multiple JADUs	Two or More Pre-Existing Primary Units + Converting Common Area to ADU or JADU
SFR	Yes	No	No	No	No	No	-	-	-	-	-	-	-	-
Two or More Primary Units	-	-	-	-	-	-	No	No	No	No	No	No	Yes	Yes

\*Things to Remember:  
 1) Primary Unit includes apartments and condos  
 2) JADUs are always attached to the primary unit

Section 65852.2(e)(1) of the California Government Code (State Code) establishes certain ADU and JADU designs that are permitted by-right under State law, *i.e.*, if the ADU or JADU design meets the State law criteria, the local permitting authority must approve the design. Designs allowed by-right under the State Code are specified as follows:

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following: (e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(emphasis added.) The State Code specifically prohibits the City from imposing restrictions that preclude an ADU or JADU that is otherwise permitted by-right. Sections 65852.2(a)(5) and (6)(A) state:

(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(6)(A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed except that, subject to subparagraph (B), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(emphasis added). The City's ban on attached ADUs and JADUs in the Beach Areas violates these State Code provisions.

2) The City cannot impose an affordability requirement on by-right JADUs in the Beach Areas unless they are replacing "Protected Units" under State law.

The interim ordinance, as codified in Section 10.12.020(Q) of the Manhattan Beach Municipal Code (MBMC), states that a JADU built to replace an existing dwelling unit must be rented only for affordable rent:

A junior accessory dwelling unit, as defined in Section 10.74.020 of this Code, may be constructed to comply with this subsection, and the property owner shall record a declaration of

restrictions, in a form approved by the City Attorney, placing the following restrictions on the property, the property owner, and all successors in interest: . . . (iii) the junior accessory dwelling unit is to be rented only for an “affordable rent” as defined in Health and Safety Code Section 50053 . . . .

(emphasis added). This requirement is reflected in Staff Report Attachment I:

A blanket affordability restriction imposes an additional requirement on by-right JADUs, which is prohibited by State Code

ATTACHMENT I

Minimum Dwelling Replacement Options - Beach Area

Existing Permitted Development (includes ADUs) To Be Demolished	SFR	SFR + Detached ADU	SFR + Attached ADU	SFR + Attached ADU + JADU	SFR + Multiple ADUs	SFR + Multiple JADUs	SFR + ADU + Multiple JADUs	Two Primary Units	Two Primary Units + ADU	Two Primary Units + Attached ADU	Two Primary Units + ADU + JADU	Two Primary Units + Multiple ADUs	Three Primary Units	Three or More Primary Units	Four or More Primary Units	Four or More Primary Units + ADU	Comments
1 Existing Unit	Yes	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
2 Existing Units	No	Yes	No	Yes	-	-	-	Yes	-	-	-	-	-	-	-	-	Replacement pre-empts density max. in MBMC 10.12.030
3 Existing Units	No	No	No	No	Yes	No	No	No	Yes	-	-	-	Yes	-	-	-	Replacement pre-empts corner walk-street condo max
4 or More Units	No	No	No	No	No	No	No	No	No	No	No	No	-	Yes	Yes	No	Replacement pre-empts density max in MBMC 10.12.030

\*Things to Remember:  
 1) "Primary Units" includes apartments and condos  
 2) An ADU can only be a replacement unit in conjunction with an SFR. ADUs cannot be replacement units in conjunction with multiple primary units. A single affordable JADU can be a replacement unit in conjunction with multiple primary units.  
 3) Replacement min pre-empts density max found in MBMC 10.12.030  
 4) All JADUs built as a replacement unit must be "affordable"

State law requires a JADU to be subject to an affordability restriction only if it is replacing a “Protected Unit,” that is, a unit that was occupied by a low-income household. See Section 66300(d). If a property owner is replacing an existing non-low-income unit with a JADU, State Code does not require an affordability deed restriction on the JADU. The City’s imposition of an affordability restriction on this category of by-right JADUs violates State Code Sections 65852.2(a)(5) and (6)(A).

Conclusion:

The interim ADU ordinance places impermissible restrictions on by-right ADUs and JADUs in the Beach Areas. We respectfully request that the ADU ordinance be amended to bring it in conformity with State law.

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**From:** Karynne Thim <kt@ktbeachproperties.com>  
**Sent:** Tuesday, June 9, 2020 5:39 PM  
**To:** List - Planning Commission <PlanningCommission@citymb.info>  
**Subject:** [EXTERNAL] ADU Planning Session Comment

**CAUTION:** This Email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

First of all, thank you for the countless hours you invest on behalf of the city and its residents.

Dovetailing with Brandon Straus' thoughts and recommendations regarding the inconsistencies between state-mandated ADU laws and current city ordinances, an additional perspective to consider is the negative impact the inconsistencies have had on property owners caught in the crosshairs. Owners of 3+ unit properties have suffered a significant loss in value as a result of their properties being rendered undevelopable. There are over 300 such properties in the City.

It's imperative that city ordinances be relaxed and streamlined to resolve inconsistencies and restore certainty to the development process. In addition to protecting private property rights, increased assessed valuations from new construction, which translates to increased property tax revenue to the City, is vital, especially at this time of budget turmoil.

Thank you for your consideration,

Karynne

--

**Karynne Thim | Real Estate Broker**  
*Specializing in South Bay Beach Properties Since 1993*  
Strand Hill | Christie's International Real Estate  
Cell +1-310-753-7816  
[kt@ktbeachproperties.com](mailto:kt@ktbeachproperties.com) | [www.ktbeachproperties.com](http://www.ktbeachproperties.com)  
CalBRE #01161295

KARYNNE THIM



BEACH PROPERTIES



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**From:** Audrey Judson <homes@audreyjudson.com>  
**Sent:** Tuesday, June 9, 2020 7:48 PM  
**To:** List - Planning Commission <PlanningCommission@citymb.info>  
**Subject:** [EXTERNAL] ADU Laws

**CAUTION:** This Email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Dear Planning Commission Members,

Thank you for all of your hard work on behalf of the residents of Manhattan Beach.

Brandon Straus' comments regarding the inconsistencies between state-mandated ADU laws and current city ordinances are valid. Homeowners of 3+ unit properties are in a tough situation if they choose to sell or substantially remodel or develop their properties. Property values are being affected. It's important that city ordinances be re-examined to resolve these inconsistencies and avoid resulting in devaluation of property values.

Thank you.

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**From:** Brigitte Pratt <bpratt@strandhill.com>  
**Sent:** Tuesday, June 9, 2020 8:52 PM  
**To:** List - Planning Commission <PlanningCommission@citymb.info>  
**Cc:** Kevin Pratt <kpratt@strandhill.com>  
**Subject:** [EXTERNAL] June 10th ADU Planning Session

**CAUTION:** This Email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

To: Manhattan Beach Planning Commission

Re: June 10 ADU Planning Session

First of all, thank you for the countless hours you invest on behalf of the city and its residents.

Dovetailing with Brandon Straus' thoughts and recommendations regarding the inconsistencies between state-mandated ADU laws and current city ordinances, an additional perspective to consider is the negative impact the inconsistencies have had on property owners caught in the crosshairs. Owners of 3+ unit properties have **suffered a significant loss in value as a result of their properties being rendered undevelopable**. There are over 300 such properties in the City. We currently have two of them on the market located at **200 15th Street** and **201 15th Street**.

It's imperative that city ordinances be relaxed and streamlined to resolve inconsistencies and restore certainty to the development process. In addition to protecting private property rights, increased assessed valuations from new construction, which translates to increased property tax revenue to the City, is vital, especially at this time of budget turmoil.

Thank you for your consideration,

BRIGITTE PRATT  
REALTOR | CalDRE#01910418

Strand Hill | Christie's International Real Estate  
D + 310.613.6609 | O + 310.545.0707  
[bpratt@strandhill.com](mailto:bpratt@strandhill.com) | [prattbeachproperties.com](http://prattbeachproperties.com)



I have not and will not verify or investigate the information supplied by third parties.

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**From:** jeremy shelton <jkshelton73@gmail.com>  
**Sent:** Tuesday, June 9, 2020 9:15 PM  
**To:** List - Planning Commission <PlanningCommission@citymb.info>  
**Subject:** [EXTERNAL] MB ADU and Zoning issues

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City MB Planning Commission.

RE: 408 Manhattan Ave

Planning Commission, Mayor, and Council,

I am writing this to you as a representative of the estate of Martha Hickey, lifetime MB resident and now sole trustee of 408 Manhattan Ave.

Mrs. Hickey and her family have owned this triplex since the early 1960's. Over the years, the family held this property as a primary residence where they raised their children and lived for many years. For generations, this home has been a treasured family gathering place, a retreat for their children and friends, and ultimately a rental asset that has endured for the goal of retirement. That time has come after 50 years...



In December 2019, I was asked to represent Mrs. Hickey in the sale of her triplex. At the time the property had a market value of \$5,000,000.

Since these regulations have been introduced, it is FACT that Mrs. Hickey and her estate have been harmed by at least 30% in property value. In addition, and more distressing, the regulations have basically resulted in the stifling of the market for this and other properties that fall into this black hole of bureaucracy. In other words....this and other 3-4 unit properties are **un-sale-able.**

Mrs. Hickey is of advanced age, does not have the time or resources to fight this, and will be irreparably harmed if our leadership does not act. Her and her family do not deserve this after 60+ years of being, among many things, productive business owners, positive stewards of our community, and responsible taxpayers.

She deserves better.

Thank you for your time,

Respectfully.

JEREMY SHELTON  
REALTOR® | CaIDRE#01416145

Strand Hill | Christie's International Real Estate  
D + 310.245.3705 | O + 310.545.0707  
[www.jeremysheltonhomes.com](http://www.jeremysheltonhomes.com)  
[jeremy@strandhill.com](mailto:jeremy@strandhill.com) | [www.strandhill.com](http://www.strandhill.com)

I have not and will not verify or investigate the information supplied by third parties. Sent from my iPhone.

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**From:** CHRISTA LYONS <Christalyons@verizon.net>  
**Sent:** Wednesday, June 10, 2020 7:24 AM  
**To:** List - Planning Commission <PlanningCommission@citymb.info>  
**Subject:** [EXTERNAL] ADU Planning Session

**CAUTION:** This Email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Dear Planning Commission:

Re: June 10 ADU Planning Session

First of all, thank you for your time and efforts on behalf of the property owners in Manhattan Beach. Many aspects of these news laws simply can't work in our city. Many of these affected properties can now not be developed and most absolutely need to be as they are beyond repair.

Dovetailing with Brandon Straus' thoughts and recommendations regarding the inconsistencies between state-mandated ADU laws and current city ordinances, an additional perspective to consider is the negative impact the inconsistencies have had on property owners caught in the crosshairs. Owners of 3+ unit properties have suffered a significant loss in value as a result of their properties being rendered undevelopable. There are over 300 such properties in the City.

It's imperative that city ordinances be relaxed and streamlined to resolve inconsistencies and restore certainty to the development process. In addition to protecting private property rights, increased assessed valuations from new construction, which translates to increased property tax revenue to the City, is vital, especially at this time of budget turmoil.

Thank you for your consideration,

CHRISTA LYONS  
REALTOR® | CaIDRE#01489213

Strand Hill | Christie's International Real Estate  
D + 310.722.7115 | O + 310.545.0707  
[christa@strandhill.com](mailto:christa@strandhill.com) | [www.strandhill.com](http://www.strandhill.com)

I have not and will not verify or investigate the information supplied by third parties.

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**From:** Rosanna Libertucci - outlook email <househuntsobay@outlook.com>  
**Sent:** Wednesday, June 10, 2020 1:54 PM  
**To:** List - Planning Commission <PlanningCommission@citymb.info>  
**Subject:** [EXTERNAL] ADU Planning Session - Relax, Streamline and Restore Realistic Future Development

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June 10, 2020

To: Manhattan Beach Planning Commission

Re: June 10 ADU Planning Session

First of all, thank you for the countless hours you invest on behalf of the city and its residents.

Dovetailing with Brandon Straus' thoughts and recommendations regarding the inconsistencies between state-mandated ADU laws and current city ordinances, an additional perspective to consider is the negative impact the inconsistencies have had on property owners caught in the crosshairs. Owners of 3+ unit properties have suffered a significant loss in value as a result of their properties being rendered undevelopable. There are over 300 such properties in the City.

It's imperative that city ordinances be relaxed and streamlined to resolve inconsistencies and restore certainty to the development process. In addition to protecting private property rights, increased assessed valuations from new construction, which translates to increased property tax revenue to the City, is vital, especially at this time of budget turmoil.

Thank you for your consideration,

Rosanna Libertucci

Send to: [PlanningCommission@citymb.info](mailto:PlanningCommission@citymb.info)



June 10, 2020

**VIA EMAIL**

Planning Commission  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, CA 90266  
Email: [planningcommission@citymb.info](mailto:planningcommission@citymb.info)

RE: June 10, 2020 Planning Commission Meeting, Agenda Item 06/10/20-2

To the Planning Commission:

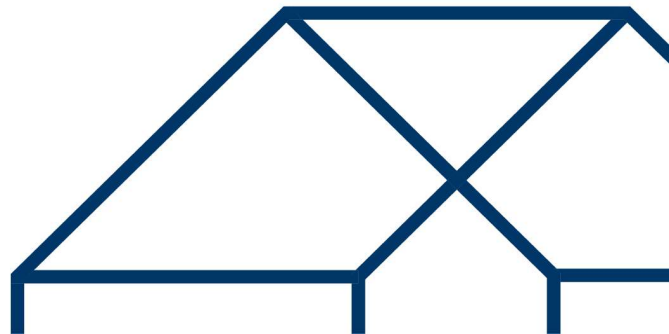
Californians for Homeownership is a 501(c)(3) non-profit organization devoted to using legal tools to address California's housing crisis. I am writing as part of our work monitoring local compliance with California's laws regarding accessory dwelling units (ADUs) and Government Code Section 66300, the Housing Crisis Act of 2019, which was established by SB 330, Stats. 2019 c. 659 § 13.

At your June 10 meeting, you will consider the replacement housing provisions in the Housing Crisis Act and how they intersect with the ADU laws, an issue that a handful of cities in the South Bay seem to be struggling with.

We follow local land use policies and practices across the state. Over the past year, we have worked to enforce California's housing laws through correspondence with around 150 cities and have filed lawsuits to enforce those laws where appropriate. To our knowledge, no city outside of the South Bay has had difficulty implementing this aspect of the Act. We are puzzled by the difficulty that these cities are having with this issue.

The Act seems simple to us. If the number of housing units in the replacement development project meet or exceed the number of units in the existing dwelling(s), the Act's replacement provisions are satisfied. ADUs, like all other forms of housing, count as housing units. There is no need for a complicated analysis of the type of ADU, its affordability, or whether it is located in the Beach Area.

To the extent that the City's confusion relates to the provisions in Government Code Section 66300(d)(2)(iii), that provision does not apply to any housing units within the City because no unit in the City is "subject to a form of rent or price control through a local government's valid exercise of its police power."



June 10, 2020

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We are particularly puzzled by the South Bay cities' struggles regarding the application of the Act in the context of legal nonconforming structures. The Housing Crisis Act is intended to make it easier to develop housing, not harder. Replacing housing that is reaching the end of its useful life plays a vital role in solving the housing crisis. If the City's nonconforming use policies would prohibit the like-for-like replacement of housing, the City is required to exempt properties from those policies to the extent needed to allow the development of new housing to comply with the Act. To enforce a contrary rule would turn the Legislature's intent on its head.

Finally, we note that the City's prohibition on Government Code Section 65852.2(a) ADUs within the Beach Area is unlawful. The City has no legally valid justification for this policy, and the Coastal Commission has been clear that Coastal Zone communities must comply with the state ADU laws, which generally improve coastal access.<sup>1</sup> When the City crafts a permanent ADU ordinance, it must provide for the development of subdivision (a) ADUs within the Beach Area. And if the City is enforcing its ban in the meantime, it is violating state law in doing so, exposing the City to the serious risk of litigation under the ADU laws and the Housing Accountability Act, Government Code Section 65589.5.

Sincerely,



Matthew Gelfand

cc: Carrie Tai, Community Development Director (by email to [ctai@citymb.info](mailto:ctai@citymb.info))  
Eric Haaland, Associate Planner (by email to [ehaaland@citymb.info](mailto:ehaaland@citymb.info))  
Angelica Ochoa, Associate Planner (by email to [aocoa@citymb.info](mailto:aocoa@citymb.info))

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<sup>1</sup> [https://documents.coastal.ca.gov/assets/rflg/California Coastal Commission ADU Memo dated 042120.pdf](https://documents.coastal.ca.gov/assets/rflg/California%20Coastal%20Commission%20ADU%20Memo%20dated%20042120.pdf).