

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

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January 29, 2024

Ricky Caperton, Planning Manager  
Planning Department  
City of Napa  
1600 First St  
Napa, CA 94559

Dear Ricky Caperton:

**RE: Review of Napa's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, § 65852.2)**

Thank you for submitting the City of Napa (City) accessory dwelling unit (ADU) Ordinance No. 2020-004 (Ordinance), adopted April 21, 2020, to the California Department of Housing and Community Development (HCD). HCD has reviewed the Ordinance and submits these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD finds that the Ordinance does not comply with section 65852.2 in the manner noted below. Under that statute, the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than February 29, 2024.

State ADU Law has changed significantly in the years since the Ordinance's adoption. In the City's response to this letter, please indicate if the City will be adopting a new Ordinance to comply with State ADU Law. Until a compliant Ordinance has been adopted, the City must provide for the creation of ADUs pursuant to State ADU Law.

The Ordinance addresses many statutory requirements; however, HCD finds that the Ordinance does not comply with State ADU Law in the following respects:

- **17.52.015 – Ministerial Process and Timing** – The Ordinance states “Each Accessory Dwelling Unit (ADU) shall be subject to building permit requirements and compliance with the standards set forth in this Section 17.52.015.” However, Government Code section 65852.2, subdivision (a)(3) requires that, “A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60

days from the date the permitting agency receives a completed application....” Therefore, the City must amend the Ordinance to provide a ministerial approval process within the 60-day timeline to comply with State ADU Law.

- 17.52.015 A.2. – *Bedroom Limitation* – The Ordinance allows “Two bedrooms maximum per ADU.” However, limiting the number of bedrooms within an ADU may constrain housing choice and result in discriminatory effects on families with children, people with disabilities, and other protected groups in violation of state and federal fair housing laws, including but not limited to Government Code section 65008, subdivisions (a)(1)(A) and (b)(1)(B)(i).

Additionally, local design standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), may not preclude a unit built subject Government Code section 65852.2, subdivision (e). Subdivision (e) ADUs would not be limited to two bedrooms. The City must note the exception or remove the section.

- 17.52.015 A.3. – *Maximum Floor Area* – The Ordinance limits ADU size to a maximum of 1,200 square feet. However, local design standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), may not preclude a unit built subject Government Code section 65852.2, subdivision (e), which includes all conversions of existing space single-family and multifamily primary dwellings. These conversions do not have a maximum size limitation. The City must note the exceptions.
- 17.52.015 A.4. and C.1. – *Height* – The Ordinance requires an “administrative permit” for any ADU above 16 feet, subject to Chapter 17.58. However, Government Code section 65852.2, subdivision (c)(2)(D), sets a height maximum of 16, 18, 20 or 25 feet, depending on applicable provisions. Furthermore, the term “administrative permit” is defined in Section 17.58.070, which states “The decision-making authority may apply reasonable conditions of approval to bring the development into conformity with requisite performance standards as applicable and other zoning ordinance requirements.”

Government Code section 65852.2, subdivision (a)(1)(B)(i), authorizes the City to impose “objective standards” towards the creation of ADUs. Objective standards are defined in subdivision (j)(7) as “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.” As written, the Ordinance describes no objective standards under which such “reasonable conditions” may be applied, nor what constitutes “reasonable” or a “performance standard”, nor if inconsistency with such conditions or standards would constitute grounds for a permit denial. The lack of objective standards creates a discretionary approval process. Government Code section 65852.2, subdivision (a)(6), allows “only ministerial

provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units” and subdivision (a)(7) states, “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.” Therefore, the City must amend height limitations to comply with statute, provide objective standards and a ministerial approval process.

- 17.52.015 A.5.a. – *Setbacks & Underlying Zoning* – The Ordinance states “Each attached ADU must comply with the setback requirements in the underlying zoning district...” However, Government Code section 65852.2, subdivision (c)(2)(C) prohibits, “Any 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.” Front setbacks, therefore, must be waived to the extent necessary to permit at least an 800 square foot attached ADU. The City must note the exception.
- 17.52.015 A.6.a. – *Unit Allowance* – The Ordinance states “One ADU or JADU is permitted per lot developed with a single-family dwelling unless the ADU is a detached ADU, in which case a JADU is also permitted.” Government Code section 65852.2, subdivision (e)(1) states, “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 and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling...(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.” Subparagraph (B) permits “[o]ne detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks.” The use of the term “any” followed by an enumeration of by right ADU types permitted indicate that any of these ADU types can be combined on a lot zoned for single family dwellings.

This permits a homeowner, who meets specified requirements, to create one converted ADU; one detached, new construction ADU; and one junior accessory dwelling unit (JADU). Thus, if the local agency approves an ADU that is created from existing (or proposed) space, and the owner subsequently applies for a detached ADU (or vice versa) that meets the size and setbacks pursuant to the subdivision, the local agency cannot deny the application, nor deny a permit for a JADU under this section. HCD notes that the Legislature, in creating the list, did not use “or” nor “one of” to indicate only one or another would be applicable to the exclusion of the other. Limiting single-family lots to

one ADU would prevent property owners from creating ADUs by right under subdivision (e)(1). Therefore, the City must amend the Ordinance to allow all by-right ADU combinations required by State ADU Law.

- 17.52.015 A.6.b. – *Multifamily and Subdivision (a)* – The Ordinance states “ADUs may be constructed on lots developed with multifamily dwellings in accordance with California Government Code section 65852.2, subdivision (e).” However, Government Code section 65852.2, subdivision (a)(1)(D)(ii), permits ADUs subject to local development standards on lots zoned to “...allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.” Such units may be attached, detached, or created within existing space, and the existence of or application for any unit created to Government Code section 65852.2, subdivision (a) may not preclude the creation of any unit created subject to Government Code section 65852.2, subdivision (e). The City must amend the Ordinance to comply with statute.
- 17.52.015 A.8.c. – *Parking Exemptions* – The Ordinance provides five conditions under which no parking may be required, and these conditions match those of Government Code section 65852.2, subdivision (d)(1)(A) through (d)(1)(E). However, it omits reference to the conditions of subdivision (d)(1)(F): “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.” Therefore, the City must add this language to come into consistency with State ADU Law.
- 17.52.015 C.2 – *Historic Resources Inventory* – The Ordinance requires an administrative permit for “An ADU located on a lot containing a principal dwelling unit listed on the City's Historic Resources Inventory (HRI); provided however, an administrative permit shall not be required for conversion of an existing accessory structure that does not involve any exterior alterations.” As noted in the above finding on Height, the use of an administrative permit creates a potentially discretionary process that may not apply per Government Code section 65852.2, subdivision (a)(3). The City must amend the Ordinance to remove any reference to a nonministerial approvals process.
- 17.52.015 D.2 – *Sprinklers* – The Ordinance states “An ADU is not required to be equipped with fire sprinklers unless fire sprinkler installation is required for the principal dwelling unit.” Please note that current Government Code section 65852.2, subdivisions (a)(1)(D)(xii) and (e)(3) also provide that, “The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.” Therefore, the City must add this language to this section.

- 17.52.015 E.1. – *JADU Basic Design Requirements* – The Ordinance states “Each JADU shall be constructed within the walls of the existing or proposed principal dwelling unit.” However, Government Code section 65852.22, subdivision (i)(1), defines a JADU as “a unit no more than 500 square feet,” and current subdivision (a)(4) states that for the purposes of creating JADUs, “enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” Therefore, the City must amend the Ordinance to add these provisions.
- 17.52.015 E.3 – *JADUs and Interior Entry* – The Ordinance requires that “Each JADU shall include a separate entrance from the main entrance to the existing or proposed principal dwelling unit and may include an interior entry to the main living area.” However, Government Code section 65852.22, subdivision (a)(5)(B) requires that “If a permitted junior accessory dwelling unit does not include a separate bathroom, the permitted junior accessory dwelling unit shall include a separate entrance from the main entrance to the structure, with an interior entry to the main living area.” Therefore, the City must amend the Ordinance to comply with State ADU Law.
- 17.52.015 E.4. – *Kitchenette Definition* – The Ordinance requires “Each JADU shall, at a minimum, include an efficiency kitchen as defined in Section 17.06.030.” Section 17.60.030 defines such a kitchen as “an area used, or designated to be used, for the preparation of food with the following minimal requirements: (1) a sink with a maximum waste line diameter of 1.5 inches, (2) a cooking facility with appliances that do not require electrical service greater than 120 volts, natural gas, or propane gas....” However, current Government Code section 65852.22, subdivision (a)(6) requires that kitchenettes have “(A) A cooking facility with appliances. (B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.” Therefore, any requirement specific to a JADU regarding sink waste line diameter or to voltage or gas service that does not conform to the City’s general building code is inconsistent with State ADU Law. The City must amend the definition of “efficiency kitchen” to reflect current statute.
- 17.52.015 E.7. – *Owner Occupancy* – The Ordinance requires that “The property owner shall reside in either the principal dwelling unit or the JADU.” However, Government Code section 65852.22, subdivision (a)(2) provides an exception: “Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.” Therefore, the City must note the exception.
- 17.52.015 E.8.c. – *Transient Use* – The Ordinance requires the deed restriction to provide a “A prohibition on using the JADU for transient occupancy, as defined by Section 17.06.030.” However, this requirement exceeds statute.

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JADU deed restrictions pursuant to Government Code section 65852.22, subdivision (a)(3)(A) and (B), only prohibit “the sale of the junior accessory dwelling unit separate from the sale of the single-family residence” and restrict “the size and attributes of the junior accessory dwelling unit that conforms with this section.” Any requirement in a deed restriction beyond these two items is inconsistent with State JADU Law. Therefore, the City must remove this section.

In response to the findings in this letter, and pursuant to Government Code section 65852.2, subdivision (h)(2)(B), the City must either amend the Ordinance to comply with State ADU Law or adopt the Ordinance without changes. Should the City choose to adopt the Ordinance without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinance complies with State ADU Law despite the findings made by HCD. Accordingly, the City’s response should provide a plan and timeline to bring the Ordinance into compliance.

Please note that, pursuant to Government Code section 65852.2, subdivision (h)(3)(A), if the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD may notify the City and the California Office of the Attorney General that the City is in violation of State ADU Law.

HCD appreciates the City’s efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please contact Mike Van Gorder, of our staff, at (916) 776-7541 or at [mike.vangorder@hcd.ca.gov](mailto:mike.vangorder@hcd.ca.gov) if you have any questions or would like HCD’s technical assistance in these matters.

Sincerely,



Jamie Candelaria  
Senior Housing Accountability Unit Manager  
Housing Policy Development Division