

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



February 17, 2022

Cara (Meche) Miralles, Assistant Planner
City of Buellton
331B Park St.
PO Box 1819
Buellton, CA 93427

Dear Cara Miralles:

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

Thank you for submitting the City of Buellton's (City) accessory dwelling unit (ADU) ordinance (Ordinance No. 20-03) ("Ordinance"), adopted March 26, 2020, to the California Department of Housing and Community Development (HCD). The Ordinance was received on October 25, 2021. HCD has reviewed the Ordinance and is submitting these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD has determined that the Ordinance does not comply with section 65852.2 in the manner noted below. Under the 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 March 20, 2022.

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

- Section 1 (D)(3); Section 19.06.180 (C)(5)(a)(iv); Section 19.06.180 (C)(6)-(8) – *Restricted Areas* – The Ordinance has prohibited ADUs in certain residential areas, citing concerns about traffic congestion and a lack of parking. The Ordinance restricts ADUs and junior accessory dwelling units (JADUs) in the Central Avenue area to lots where an off-street parking space can be provided for both the primary dwelling and the proposed ADU, and the Ordinance entirely prohibits ADUs and JADUs in the Highway 246 West and Village Specific Plan areas. The problems cited for each restricted area are that "increased congestion caused by residents of potential new accessory dwelling units and their vehicles parked off site would... hinder traffic flow, exacerbate conflicts between pedestrians and vehicles, and cause delays in emergency response to homes in the area." However, Government Code section 65852.2, subdivision (d)(1), states that parking standards shall not be imposed when "the accessory dwelling unit is

located within one-half mile walking distance of public transit". All cited restricted areas are within a half-mile walk to a bus stop. Therefore, parking is not required to be provided in in these areas. HCD does not accept the provided concerns about traffic flow and parking as grounds suitable to establish restricted areas. Until the City provides detailed analysis on the traffic flow and HCD accepts that analysis, the City may not constrain ADUs in certain designated areas. The City should revise the Ordinance to remove references to restricted areas.

- *Section 19.06.180 (B) – Efficiency Kitchen* – The Ordinance defines an efficiency kitchen to include a food preparation counter with an area of at least 15 square feet, and food storage cabinets with a minimum of 30 square feet of shelf space. However, Government Code section 65852.22, subdivisions (a)(6)(A) and (B), only require that an efficiency kitchen include a food preparation counter and storage cabinets that are “of reasonable size” in relation to the size of the JADU. As written, the size requirements in the Ordinance act as a constraint for JADUs and are inconsistent with Government Code section 65852.22, subdivisions (a)(6)(A) and (B). The City should remove the kitchen size requirements.
- *Section 19.06.180 (C)(3) – Separate conveyance* – The Ordinance prohibits the separate conveyance of an ADU or JADU. However, Government Code section 65852.26 allows for the separate conveyance of an ADU if it meets all the requirements listed in subdivision (a) of the statute. The Ordinance should be amended to allow for such a conveyance.
- *Section 19.06.180 (C)(5)(a)(i)(E); 19.06.180 (C)(5)(a)(iii)(A) – Subjective Design Standards* – The Ordinance prohibits an ADU from being “located in a way that would ...impede safe ingress from a required side, rear, or front setback.” It further requires that an ADU “be compatible with the design of the surrounding neighborhood and not cause excessive noise, traffic, parking, or other disturbance to the existing neighborhood or adversely affect public services and resources.” Although an adopted ADU Ordinance may allow a local agency to develop or establish certain objective development standards, those standards may not exceed standards contained within ADU statute or impede the creation of ADUs. Terms such as “impede safe ingress”, “compatible”, “excessive noise”, and “adversely affect” are subjective terms. Government Code section 65852.2, subdivision (a)(4), requires that jurisdictions “provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units....” Such subjective terms therefore violate state statute. Furthermore, Government Code section 65852.2, subdivision (a)(6), states that “no additional standards, other than those provided in this subdivision, shall be used or imposed.” Neighborhood compatibility, noise concerns and “other disturbances” do not fall in statute. Therefore, the City should remove these sections.
- *19.06.180 (C)(5)(a)(i)(D) – Fence* – The Ordinance requires that a fence be constructed specifically for the ADU along the side and rear property lines. It is

unclear as to whether such a fence is required for the primary structure, and if such a determination is not part of the general building standard, then it is considered violative of Government Code section 65852.2, subdivision (a)(6). The City should inform HCD whether this requirement exists in the general building standard; if it does not, then the requirement should be removed.

- *19.06.180 (C)(5)(a)(ii) – Open Space Requirement* – The Ordinance requires that “the open space area shall be commonly accessible to both the main unit and the ADU unless otherwise approved by the director.” However, the City does not elaborate on how the director would approve such a design element exception, creating the possibility for a subjective review and administrative burden. Government Code section 65852.2, subdivision (a)(4), states that “[a]n existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units.” Furthermore, such a requirement could also unlawfully prevent an 800 square-foot ADU from being built on a lot. Local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created under subdivision (e), and therefore such local development standards cannot prevent the development of an 800 square-foot ADU with a height limit of 16 feet and four-foot setbacks as noted in subdivision (e)(1)(B). The City should clarify this requirement, changing “shall” to “should”, and add the clause, “However, no local design standard, such as the open space access requirement, shall preclude an accessory dwelling unit of at least 800 square feet with a height limit of 16 feet and four-foot setbacks from being constructed.”
- *Section 19.06.180 (C)(5)(a)(iv) – Accessory Structure* – The Ordinance states that “except for exempt ADUs described in Section D.3 of this Chapter, an ADU shall not be permitted on a lot zoned for single-family use, in addition to a guest house or similar structure.” This is impermissible. Government Code section 65852.2, subdivision (a)(6), states that “no additional standards, other than those provided in this subdivision, shall be used or imposed....” The prior existence of another accessory structure on a lot cannot preclude the development of an ADU built under Government Code section 65852.2, subdivision (a). Therefore, the City should remove this reference.
- *19.06.180 (D)(1/2/3/5) – Application Procedure* – The Ordinance currently has a process in place for ADU approval, including a “Project Application form” and an “ADU/JADU Application Checklist,” and the requirement that “associated approvals” be secured “when other permits are required that are subject to discretionary review by the Zoning Administrator or Planning Commission.” However, Government Code section 65852.2, subdivision (a)(4), requires “only ministerial provisions for the approval of accessory dwelling units....” While it is

certain that the discretionary review of a Zoning Administrator or Planning Commission is prohibited, it is unclear whether the "Project Application Form," "ADU/JADU Application Checklist," and "associated approvals" are indeed objective in order to satisfy subdivision (a)(4). Furthermore, Government Code section 65852.150, subdivision (b), requires that "requirements [for ADUs] are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units." HCD requests a copy of the Project Application Form and ADU/JADU checklist for our review to ensure that such forms are sufficiently objective and not so burdensome as to violate Government Code section 65852.150, subdivision (b). Therefore, the City should remove the requirement that ADUs receive additional approvals that may be subject to discretionary review.

- *19.06.180 (D) (3) – ADU Exemption* – The Ordinance sets out that "certain categories of ADUs shall be permitted without applying local development standards... if proposed on a lot developed with one single-family home." However, Government Code section 65852.2, subdivision (a)(1) states that jurisdictions "provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use," not just those "proposed on a lot developed with one single-family home." The Ordinance should include ADUs on lots proposed to be developed with a single-family home, as well as lots with an existing multifamily or single family home. The City should amend the language accordingly.

In these respects, revisions are necessary to comply with statute.

HCD will consider any written response to these findings, such as a revised ordinance or a detailed plan to bring the Ordinance into compliance with law by a date certain, before taking further action authorized pursuant to Government Code section 65852.2. Please note that HCD may notify the Attorney General's Office in the event that the City fails to take appropriate and timely action under section 65852.2, subdivision (h).

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 if you have any questions or would like HCD's technical assistance in these matters.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Zisser", with a stylized flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability