

**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 7, 2023

Brent Cooper
Community Development Director
City of American Canyon
4381 Broadway Street, Suite 201
American Canyon, CA 94503

Dear Brent Cooper:

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

Thank you for submitting the City of American Canyon's (City) accessory dwelling unit ADU Ordinance No. 2020-04, adopted August 18, 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 March 9, 2023.

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

- *Sections 19.39.040 Definitions, 19.39.050(E) – Multifamily Omitted* – The Ordinance defines an “accessory dwelling unit” as meaning “one additional attached or detached residential dwelling unit one thousand two hundred (1,200) square feet or less that is on the same parcel as a single-family dwelling.” Later sections again refer to allowances and development standards exclusively for “the single-family primary residence”.

However, Government Code section 65852.2, subdivision (a)(1)(D)(iii), provides that an ADU may be attached to, within, or detached from the proposed or existing primary dwelling. The City must amend the ADU definition to include “within” the proposed or existing primary dwelling. Furthermore, the Ordinance defines ADUs as units on the same parcel as single-family residences and omits multifamily dwellings. Pursuant to Government Code section 65852.2, subdivisions (a)(1) and (a)(1)(D)(ii), ADUs may be created in areas zoned to

allow single-family **and/or multifamily dwelling** residential use. The City must amend the Ordinance definition of ADUs to include multifamily residences.

- *Section 19.39.040 – “JADU” Definition* – The Ordinance defines a junior accessory dwelling unit (JADU) as being “contained entirely within the primary residence.” However, pursuant to Government Code section 65852.22, subdivision (a)(4), an attached garage shall be considered as a part of the single-family residence and therefore may be used to create a JADU. The Ordinance must be amended to clarify compliance with State ADU Law.
- *Section 19.39.050(A) – Development Standards* – The Ordinance requires the primary residence to remain in compliance with the standards in place for the primary dwelling for an applicant to add an ADU. However, Government Code section 65852.2, subdivision (d)(2), states that a “local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit.” Therefore, the approval of an ADU application may not be contingent on compliance with applicable standards to the primary residence. The City must remove this section of the Ordinance.
- *Section 19.39.050(F)(4), (G), (J)(3) – Maximum Height* – The Ordinance states that the maximum height of an ADU is 16 feet. However, Government Code section 65852.2, subdivision (c)(2)(D), requires height maximums of no less than 16, 18, or 25 feet, depending on stated conditions. The City must amend its Ordinance accordingly.
- *Section 19.39.050(I) and 19.39.050(A) – Deed Restrictions* – The Ordinance notes a prohibition on the sale of an ADU separate from the site’s primary dwelling. However, Government Code 65852.26, subdivision (a)(1), creates a narrow exception to allow separate conveyance of ADUs with the involvement of qualified nonprofit housing organizations. The City must revise the Ordinance to allow for such an exception.
- *Section 19.39.060(A)(1), (2), (4) and (5) – JADU Standards* – The Ordinance requires standards for electric service size, includes a prohibition on natural gas or propane, and requires a kitchen sink and a kitchen sink waste line. However, Government Code section 65862.22, subdivision (a)(6), requires a JADU to include an efficiency kitchen that is defined only as “a cooking facility with appliances, and includes a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.” Where these kitchen requirements exceed those authorized in statute, the City must amend the Ordinance to comply with State ADU Law.

- *Section 19.39.070(C)(2) – Parking Standards* – The Ordinance states that parking is not required if the detached ADU is within a half-mile walking distance of public transit or within one block of a car-sharing pickup/drop-off. While this complies with State ADU Law, the Ordinance omits other instances found in Government Code section 65852.2, subdivision (d), where parking may not be required when:
 - The ADU is located within an architecturally and historically significant historic district. (Gov. Code, § 65852.2 (d)(2).)
 - The ADU is part of the proposed or existing primary residence or an accessory structure. (Gov. Code, § 65852.2 (d)(3).)
 - On-street parking permits are required but not offered to the occupant of the ADU. (Gov. Code, § 65852.2 (d)(4).)

The City must amend the Ordinance to include these exceptions.

- *Section 19.39.090(C) and (D) – Design Standards* – The Ordinance requires that an ADU be “aesthetically compatible with the primary residence and the surrounding neighborhood....” It also allows the community development director to “consider... the placement of windows, decks and balconies, landscape screening, height, and number of stories in determining if privacy will be materially reduced.” However, Government Code section 65852.2, subdivision (a)(6), requires that ADU ordinances include “...only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units....” Terms like “aesthetically compatible” and “determining if privacy will be materially reduced” are subjective in violation of State Statute. The City must amend these sections to apply only objective standards.

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) 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 black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" and the last name "West" clearly distinguishable.

Shannan West
Housing Accountability Unit Chief