

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

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March 3, 2023

Amanda Cook, Planning Director
Planning Department
City of Avalon
P.O. Box 707
Avalon, CA 90704

Dear Amanda Cook:

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

Thank you for submitting the City of Avalon's (City) ADU ordinance, No. 1194-21 (Ordinance), adopted March 2, 2021, to the California Department of Housing and Community Development (HCD). HCD has reviewed the Ordinance and is submitting these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD has determined 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 finding no later than March 31, 2023.

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 9-5.603 (a) – Definitions** – The Ordinance defines an ADU as “an attached or detached residential dwelling unit...” However, Government Code section 65852.2, subdivision (a)(1)(D)(iii), states that “the accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling.” Units created within the primary dwelling are also called “conversions.” Therefore, the City must amend the Ordinance to include ADUs created within the proposed or existing primary dwelling.
- **Section 9-5.603 (e)(2) – Junior Accessory Dwelling Unit (JADU) Definition** – The Ordinance defines a JADU as “contained entirely within an existing or proposed single-family structure.” However, Government Code section 65852.22, subdivision (a)(4), states that JADUs must be constructed within the walls of the proposed or existing single-family residence and that for this purpose, attached garages are considered a part of the proposed or existing single-family residence. The City must amend the Ordinance to add attached garages to this definition.

- *Section 9-5.604 (a)(1) – Converted Single-Family Lot* – The Ordinance states that “Only one ADU and JADU on a lot with a proposed or existing single-family dwelling, where the ADU or JADU: is...within the existing space of an accessory structure.” However, Government Code section 65852.22, subdivision (a)(4), states that JADUs must be constructed within the walls of the proposed or existing single-family residence, including attached garages, but notably *not* in an accessory structure. The City must amend to the JADU definition in the Ordinance to comply with State ADU/JADU Law.
- *Section 9-5.604(a)(2) – Limited Detached on Single-family Lot* – The Ordinance states that one detached, new construction ADU may be built on a lot with a proposed or existing single-family dwelling in addition to any JADU that might be established on the lot. However, Government Code section 65852.2, subdivision (e)(1), states that 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....” Subdivision (e)(1)(A) proceeds to allow for one ADU and one JADU created within the proposed space, and subdivision (e)(1)(B) allows for a detached ADU that meets the 800 square feet, height, and setback requirements. Pursuant to subdivision (e), an applicant may create one converted ADU, one converted JADU, and one detached ADU. The City must amend the Ordinance to allow for all these combinations.
- *Section 9-5.604(a)(2)(c) and (a)(4)(b) – Height* – The Ordinance sets the peak height for a detached ADU at 16 feet. However, Government Code section 65852.2, subdivision (c)(2)(D), prescribes the height limitations for detached and attached ADUs, and sets the limit at 16, 18 or 25 feet, as provided in the subdivision. The City must amend the Ordinance according to the applicable provisions.
- *Section 9-5.604 (c)(2) – Process and Timing* – The Ordinance states that the City must “act on” an application to create an ADU or JADU within 60 days from the date that the City receives a completed application. However, Government Code section 65852.2, subdivision (a)(3)(A) and (B), states that the local agency shall “approve or deny” an application within 60 days of receiving a completed application. Therefore, the City must amend the Ordinance to comply with State ADU Law.
- *Section 9-5.605(a)(3) and (e) – Location* –The Ordinance states that ADUs and JADUs shall require a water allocation from the water provider prior to being allowed as well as a percolation test prior to being allowed. However, pursuant to Government Code section 65852.22, subdivision (f), a JADU shall not be considered a separate or new dwelling unit for the purpose of providing water, sewer, or power. The City must amend the Ordinance to eliminate these constraints on the creation of a JADU.

- *Section 9-5.605(d) – General ADU and JADU Requirements – No Separate Conveyance* – Although the Ordinance prohibits ADUs and JADUs from being sold or otherwise conveyed separate from the primary dwelling on the site, Government Code section 65852.26 creates a narrow exception to allow separate conveyance of an ADU with the involvement of a qualified non-profit housing organization. The City must amend the Ordinance to add this exception.
- *Section 9-5.606(a)(2), (b) and (c) – Specific ADU Requirements – Maximum Size* – The Ordinance states that the maximum size of an ADU shall be limited to 50 percent of the size of the existing primary dwelling. The Ordinance also imposes floor area ratio and lot coverage requirements on ADUs. However, Government Code section 65852.2, subdivision (c)(2)(C), prohibits a local agency from imposing a “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.” (Emphasis added.) If the primary dwelling is less than 1,600 square feet, the Ordinance as it is currently written, would require an ADU to be less than 800 square feet. The City must revise the Ordinance to eliminate this potential constraint on the size of an ADU addition and clarify that neither floor area ratio nor lot coverage would deny a minimum of 800 square foot ADU.
- *Section 9-5.606(d) – Specific ADU Requirements – Height* – The Ordinance states, “No ADU subject to this section 9-5.606 may exceed 16 feet in height above grade, measured to the peak of the structure.” However, as noted above, Government Code section 65852.2, subdivision (c)(2)(D), prescribes the height limitations for detached and attached ADUs, and sets the limit at 16, 18 or 25 feet, as provided in the subdivision. The City must amend the Ordinance according to the applicable provisions.
- *Section 9-5.607(b)(2) – Fees – Utility Fees* – The Ordinance incorrectly states that JADUs may require a new, separate utility connection. However, pursuant to Government Code section 65852.22, subdivision (a)(4), a JADU may only be created within the walls of the single-family residence. Therefore, a separate utility connection would not be required. Furthermore, JADUs are not considered a separate or new dwelling unit as it pertains to water, sewer, or power (Government Code, § 65852.22, subdivision (f)). The City must revise the Ordinance to remove the reference to JADUs in this paragraph.

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 feel free to contact Michael McLaughlin, of our staff, at 916-776-7773 or at Michael.McLaughlin@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Housing Accountability Unit Chief