

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

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April 25, 2023

David Crompton  
Chief of Planning  
City of Danville  
510 La Gonda Way  
Danville, CA 94526

Dear David Crompton:

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

Thank you for submitting the City of Danville (City) accessory dwelling unit (ADU) Ordinance No. 2021-01 (Ordinance), adopted March 2, 2021, 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 sections 65852.2, 65852.22, and 65852.26 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 May 24, 2023.

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

- *Section 32-76.2(f) – Conversions* – The Ordinance states, “Conversions shall be defined as the modification of an existing **enclosed** detached structure or the modification of a portion of an existing residence into an Accessory Dwelling Unit.” (emphasis added). However, enclosure of a structure is not a prerequisite for the creation of a converted ADU. 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, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages.” Furthermore, Government Code section 65852.2, subdivision (a)(1)(D)(xi), begins with “When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit...” These illustrate that accessory and non-enclosed structures, such as

carports, may be converted into ADUs, along with attached structures. Therefore, the City must remove the word “enclosed” from the Ordinance.

- Section 32-76.2 *j.* – *Ministerial Review Process* – The Ordinance defines the ministerial review process “as the review process conducted as part of the building permit review to ensure that a proposed Accessory Dwelling Unit is consistent with the provision of this section.” Please note that effective January 1, 2023, Government Code section 65852.2, subdivision (a)(3), was amended and requires that a permit for an ADU or JADU shall be considered and approved ministerially without discretionary hearing or review and that “the permitting agency shall approve or deny the application...within 60 days from the date a permitting agency receives a completed application...” The City should amend their Ordinance to comply with recent changes in State ADU Law.
- Section 32-76.8(b), 32-76.7(b), 32-76.6(b), 32-76.9(c) – *Front Yard and Secondary Front Yard* – The Ordinance requires ADUs to maintain front and secondary front yard setbacks. However, Government Code section 65852.2, subdivision (c)(2)(C), prohibits a local agency from establishing “Any requirement... based upon...front setbacks...that does not permit at least an 800 square foot accessory dwelling unit...” Further, ADUs created pursuant to subdivision (e), must be approved ministerially notwithstanding standards imposed under subdivisions (a) to (d). Therefore, the City must amend the Ordinance to allow for these exceptions to front yard setbacks.
- Section 32-76.10 – Junior Accessory Dwelling Units (JADUs) – The Ordinance states: “One Junior Accessory Dwelling Unit is allowed in addition to an Accessory Dwelling Unit on a residential lot. A Junior Accessory Dwelling Unit may be constructed within the walls of a proposed or existing single-family residence.” This indicates that constituents are only allowed one ADU and JADU on a residential lot. However, Government Code section 65852.2, subdivision (e)(1)(A) permits one interior conversion ADU **and** one JADU, which may in turn be combined with one new construction detached up to 800 square feet, subject to subdivision (e)(1)(B). Additionally, Government Code 65852.22, subdivision (a)(4) clarifies that enclosed uses with the residence, such as attached garages, are considered part of a proposed residence. Therefore, the City must amend statute to comply with State ADU Law.
- Section 32-76.20 – *Ownership Requirements* – The Ordinance prohibits separate sale of an ADU or JADU from its respective primary dwelling. However, as of January 1, 2022, Government Code section 65852.26, subdivision (a)(1), creates a narrow exception to allow separate conveyance of ADUs with the involvement of qualified nonprofit housing organizations. The Ordinance must provide for such an exception.

- Sections 32-76.6 (c); 32-76.7 (c); 32-76.8 (c); 32-76.9 (d) – *Height* – The Ordinance imposes height requirements of 16 feet on attached and detached ADUs in single-family and multi-family residential districts. However, Government Code section 65852.2, subdivision (c)(2)(D), prohibits ADU height limitations below 16, 18, 20 or 25 feet as applicable pursuant to the subdivision. Therefore, the City must amend its Ordinance to note these height limits.

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 provided 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 Nick Green, of our staff, at (916) 841-6665 or at [Nicholas.Green@hcd.ca.gov](mailto:Nicholas.Green@hcd.ca.gov).

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