

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

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April 14, 2023

Elena Lee, Manager
Department of Planning
City of East Palo Alto
1960 Tate St
East Palo Alto, CA 94303

Dear Elena Lee:

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

Thank you for submitting the City of East Palo Alto (City) accessory dwelling unit (ADU) Ordinance No. 08 - 2020 (Ordinance), adopted November 17, 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 sections 65852.2 and 65852.22 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 12, 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 18.96.020 – *JADU Definition* – The Ordinance defines a JADU as: “A unit that is no more than 500 square feet in size and contained entirely within a single-family residence.” However, Government Code section 65852.22, subdivision (i)(1), states that “A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.” Furthermore, Government Code section 65852.22, subdivision (a)(4), states that for the purposes of JADU creation, an attached garage is considered within the walls of a single family-residence. HCD recommends including these provisions in the Ordinance’s definition to comply with State ADU Law.
- Section 18.96.030 (A) – *Zoning* – The Ordinance permits ADU development on lots with “one proposed or legally created dwelling.” The term “legally created dwelling” is not defined in the Ordinance. Whereas Government Code section 65852.2, subdivision (a)(1)(D)(ii), and throughout the section generally uses the term “proposed or existing dwelling.” Regardless of whether the primary structure

is “legally created”, Government Code section 65852.2, subdivision (d)(2), states that “The 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 City must amend the Ordinance to comply with State ADU Law.

- Section 18.96.030 (C) – *Unit Size* – The Ordinance states that: “The maximum size of any Accessory Dwelling Unit living area, inclusive of a habitable basement and an attic, shall not exceed 1,000 square feet.” However, the Ordinance does not set a unit size requirement for detached ADUs. Government Code section 65852.2, subdivisions (c)(1) and (c)(2), establishes the maximum unit size requirements for **both** attached and **detached** ADUs. The City must amend and add detached ADUs to the unit size provision of the Ordinance.
- Section 18.96.030 (E) – *Open Space* – The Ordinance states: “A minimum of fifty percent (50%) of the remaining rear yard or 750 square feet of open space, whichever is less restrictive, shall be provided and maintained as usable rear yard open space with no permanent hardscape for life of the project on the lot.” However, requiring a certain amount of open space may restrict ADU size. Government Code section 65852.2, subdivision (c)(2)(C), prohibits local agencies from establishing “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, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” Therefore, the City must remove this requirement or positively state that no open space requirement will preclude the development of an 800 square foot ADU.
- Section 18.96.030 (L) – *Front Setback Requirements* - The Ordinance states that “Accessory Dwelling Units shall be subject to the front yard setback requirements compliant with development standards of the underlying zoning district.” However, Government Code section 65852.2, subdivision (c)(2)(C), states that a local agency may not impose any limits on front setbacks 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. The City must amend the Ordinance to comply with State ADU Law.
- Section 18.96.030(M); Section 18.96.040(C); and Section 18.96.050 (B)(2)(b) - *ADU Height Limitations* - The Ordinance provides for the maximum height allowances for ADUs. However, Government Code 65852.2 (c)(2)(D), amended by SB897 and effective January 1, 2023, provides the maximum height limitation of

up to 16, 18, 20 or 25 feet as provided in the subdivision. Therefore, the City must update the maximum height limitations to comply with State ADU Law.

- Section 18.96.030 (N)(1) – *Architectural Compatibilities* – The Ordinance states that architectural review of ADUs will be limited to “The architectural features, window styles, roof slopes, exterior materials, colors, appearance, and design of the accessory unit shall be compatible with the existing single-family residence.” However, while Government Code section 65852.2, subdivision (a)(1)(B)(i), authorizes a local agency to impose objective standards on accessory dwelling units, Government Code section 65852.2, subdivision (j)(1), further defines objective standards to mean “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.” Also, Government Code section 65852.2, subdivision (a)(6), 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....” Therefore, the City must amend the Ordinance to provide objective standards and ensure that a ministerial approval process is followed.
- Section 18.96.050 (B)(2)(a) – *Unit Combination* – The Ordinance allows combination of a JADU and an ADU if “the Accessory Dwelling Unit is fully detached and is located a minimum of six (6) feet from the primary dwelling....” However, Government Code section 65852.2, subdivision (e)(1)(A), permits “One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling” and subdivision (e)(1)(A)(i) if either the ADU or JADU “is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure...” Therefore, the ADU and JADU combination may both be within the proposed or existing single-family dwelling. Additionally, Government Code section 65852.2, subdivision (e)(1), states that a local agency shall ministerially approve an application to create any of the following ADUs listed from subdivision (e)(1)(A) through (D). The City must amend its Ordinance to also allow for a combination of subdivision (e)(1)(A) (for ADUs created within an existing space) and (e)(1)(B) (for an 800 square foot detached ADU). This would allow for the possibility of up to two ADUs (one converted and one detached) and one JADU in a single-family residence. Furthermore, the building separation requirement of six (6) feet cannot preclude the ministerial approval of an 800 square foot detached ADU created pursuant to subdivision (e)(1)(B). Therefore, the City must amend the Ordinance to comply with State ADU Law.
- Section 18.96.050 (B)(2)(b) – *Minimum ADU Size* – The Ordinance states that a JADU may be allowed on the same lot with an ADU, provided that: “The Accessory Dwelling Unit shall not exceed a total floor area of more than 800 square feet and

a maximum height of 16 feet in addition to the required elevation for floodproofing pursuant to Section 15. 52. 070(A) of the Municipal Code.” However, Government Code section 65852.2, subdivision (c)(2)(B), states that local agencies shall not establish a maximum square footage requirement for ADUs that is less than either 850 square feet, or 1,000 square feet for an ADU that provides more than one bedroom. Therefore, the City must modify its language to allow for ADU developments greater than 800 sq ft.

- Section 18.96.070 – *Illegal Accessory Units* – The Ordinance states that “The establishment or continuance of an accessory unit without a permit as required under this chapter is declared to be unlawful and shall constitute a misdemeanor violation of this chapter and a public nuisance. Any violation of this chapter shall be subject to the enforcement provisions and penalties as prescribed in Chapter 18.118. The enforcement of the code violation abatement shall be consistent with Government Code Section 17980.12.” Please note that Government Code section 65852.23, which became effective January 1, 2023, requires that a local agency shall not deny a permit for an unpermitted ADUs that was constructed before January 1, 2018. The City must amend the Ordinance to comply with recent changes in State ADU Law.

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 Nicholas Green, of our staff, at (916) 841-6665 or at Nicholas.Green@hcd.ca.gov.

Sincerely,



Shannan West
Housing Accountability Unit Chief