

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

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April 25, 2023

Sharon Goei, Community Development Director
Community Development Department
City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020

Dear Sharon Goei:

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

Thank you for submitting the City of Gilroy (City) accessory dwelling unit (ADU) Ordinance No. 2020-03 (Ordinance), adopted July 6, 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, 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 30.54.20 (b) and (c) – *ADU Conveyance* – The Ordinance prohibits the separate conveyance of an ADU or junior accessory dwelling unit (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 must be amended to allow for such a conveyance.
- Section 30.54.20 (c) – *Owner Occupancy* – The Ordinance states: “In addition, the deed restriction for a junior accessory dwelling unit shall include an owner-occupancy requirement in compliance with this article.” However, Government Code 65852.22, subdivision (a)(2) states that: “Owner occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.” Therefore, the City must amend statute to note these exceptions.
- Section 30.54.20 (e) – *Design Standards & Zoning Requirements* – The Ordinance states: “Accessory dwelling units are subject to the design standards

and other zoning requirements of the zoning district in which the existing primary dwelling is located and must be built in accordance with the building code set forth in Chapter 6, except for those design, zoning, and building standards inconsistent with state requirements under California Government Code Section 65852.2.” However, the City should clarify the design standards and zoning requirements applicable to ADUs and JADUs are only *objective* design standards and zoning requirements. Government Code section 65852.2, subdivision (a)(1)(B)(i), allows the City to impose *objective standards* on ADUs. Pursuant to subdivision (j)(7), “Objective Standards” means “...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.” Further, the Ordinance should clarify that said standards and requirements do not apply if they would preclude the construction of up to two units or physically preclude either of the units from being at least 800 square feet, per Government Code section 65852.2, subdivision (c)(2)(C).

- Section 30.54.20 (j) – *65852.2 (f)(4) Interpretation* – The Ordinance makes specific reference to Government Code section 65852.2, subdivision (f)(4): “Subject to Government Code section 65852.2, subdivision (f)(4), an accessory dwelling unit must have an independent electrical sub-panel, water heating and space heating equipment within the unit or be readily accessible to the occupant on the exterior of the unit.” However, this section of government code explicitly states the conditions under which ADUs are *not* required to utility connections, which could include water heating equipment. Therefore, the City must remove this section or revise to be consistent with statutory exceptions.
- Section 30.54.30 Preamble – *ADUs Allowed* – The Ordinance states: “Notwithstanding any other provisions of this Article, or of this chapter to the contrary, one (1) residential accessory dwelling unit shall be a permitted as a single-family residential use that complies with the following....” However, Government Code section 65852.2, subdivisions (e)(1)(A) and (e)(1)(B) may be combined, which allows single-family residences up to three units: one ADU and one JADU under subdivision (e)(1)(A), and another detached 800 square foot ADU under subdivision (e)(1)(B). The City must amend the Ordinance to be consistent with these provisions.
- Section 30.54.30 (d)(1) & (d)(2) – *ADU Size* – The Ordinance states: “...internal conversions of existing primary living space... shall be permitted not to exceed fifty (50) percent of the existing primary dwelling gross area.” However, Government Code section 65852.2, subdivision (e)(1)(A), does not limit the size of converted units. The City must amend the Ordinance to comply with State ADU Law.

- Section 30.54.30 (e)(1) & (i)(4); Section 30.54.50 (b) – *ADU Height Maximum* – The Ordinance states “[t]he maximum height for an accessory dwelling unit shall be one- story and sixteen (16) feet.” However, with the chaptering of Senate Bill 897 (Chapter 664, Statutes of 2022) (SB 897), Government Code section 65852.2, subdivision (c)(2)(D), et seq., increases ADU height allowances to 18 feet and permits a height of up to 25 feet for ADUs attached to the primary dwelling. The City should review changes to State ADU Law and must amend its Ordinance accordingly.
- Section 30.54.30 (f)(1) – *Front Yard Setbacks* – The Ordinance states “[a]n accessory dwelling unit must not encroach upon the required front yard area.” However, Government Code section 65852.2, subdivision (c)(2)(C), prohibits any local design requirement, including front setbacks, from allowing an 800 square foot ADU with a height limit of 18 feet and four-foot rear and side yard setbacks. Furthermore, 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 Government Code section 65852.2, subdivision (e). Therefore, the City must remove these provisions or note its exceptions.
- Section 30.54.30 (g) – *Parking Sidewalk Clearance* – The Ordinance states “[o]ne (1) additional parking space shall be required for a newly constructed accessory dwelling unit, which may be located within the front setback, in tandem and in an existing driveway that provides at least 18 feet of clearance from the back of sidewalk.” (Emphasis added.) However, the underlined condition violates Government Code section 65852.2, subdivision (a)(8), which provides “[n]o additional standards, other than those provided in this subdivision, shall be used or imposed....” Therefore, the City must remove this underline requirement from the Ordinance.
- Section 30.54.30 (h)(1) – *Compatible with Existing Primary Dwelling* – The Ordinance states: “The design of the single-family residential accessory dwelling unit must be compatible with the existing primary dwelling. This may be achieved through use of the same architectural details including, but not limited to, window styles, roof slopes, exterior materials, and colors.” (emphasis added) Government Code section 65852.2, subdivision (a)(1)(B)(i), allows a local agency to impose objective standards relating to parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. As described above, “Objective standards” 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. (Govt. Code § 65852.2, subd. (j)(7).) The aforementioned phrase, “including, but not limited to” may include standards not knowable by the development applicant or proponent and the public official. The

standards set forth in the Ordinance to achieve the compatibility requirement must be consistent with “objective standards” as this phrase is defined under State ADU Law.

- Section 30.54.30 (i) – *Streamlined ADUs* – The Ordinance provides that streamlined ADUs are subject to front yard setback for new construction and a height limitation of 16 feet. However, Government Code section 65852.2, subdivision (e)(1)(B), does not impose any front yard setback requirements and allows for a maximum height up to 25 feet depending on specified conditions. Therefore, the City must amend the Ordinance consistent with these requirements.
- Section 30.54.40 (a) – *Owner Occupancy* – The Ordinance states: “Owner - occupancy of the property shall be required.” However, owner occupancy for a single-family residential JADU is not required if the owner is a governmental agency, land trust, or housing organization. (Govt. Code § 65852.22, subd. (a)(2).) Therefore, the City must amend its Ordinance to note these exceptions.
- Section 30.54.40 (g) – *Shared Bathroom* – The Ordinance states: “The unit may include separate bathroom facilities or may share bathroom facilities contained within the primary residence.” However, Government Code 65852.22, subdivision (a)(5)(B), states: “If a permitted junior accessory dwelling unit does not include a separate bathroom, the permitted junior accessory dwelling unit shall include a separate entrance from the main entrance to the structure, with an interior entry to the main living area.” Therefore, the City must clarify if there is no bathroom within the JADU and the JADU will share a bathroom within the primary residence, a separate interior entry to the main living area is required.
- Section 30.54.50 (b) – *Multi-family ADU Height Requirements* – The Ordinance states: “An owner may also construct up to a maximum of two detached accessory dwelling units on a lot that has an existing permitted duplex or multifamily dwelling, subject to a height limit of sixteen (16) feet and four (4) foot rear yard and side setbacks.” However, Government Code section 65852.2, subdivision (c)(2)(D)(iii), requires a minimum height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multi-family, multi-story dwelling. Therefore, the City must amend the Ordinance to note these requirements.

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,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" written in a larger, more prominent script than the last name "West".

Shannan West
Housing Accountability Unit Chief