

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

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April 6, 2023

Brandon Phipps
Community and Economic Development Director
Department of Community Development
City of Sausalito
420 Litho Street
Sausalito, CA 94965

Dear Brandon Phipps:

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

Thank you for submitting the City of Sausalito (City) accessory dwelling unit (ADU) Ordinance No. 1290 (Ordinance), adopted August 30, 2022, 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 May 6, 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 10.44.080 (E)(1)(a) – *Accessory Dwelling Units per Parcel (Single-Family)* – The Ordinance initially states that only one ADU may be allowed per residential parcel containing an existing or proposed single-family dwelling unit, but then adds that a junior accessory dwelling unit (JADU) may be developed on the same site. Thus, the Ordinance allows a combination of one ADU and one JADU per single-family dwelling. However, Government Code section 65852.2, subdivision (e)(1), states that a local agency shall ministerially approve an application to create any of the ADUs listed from subdivision (e)(1)(A) through (D). Subdivision (e)(1)(A) allows for one ADU and one JADU that are converted from existing space, while subdivision (e)(1)(B) allows for one more detached ADU of at least 800 square feet. Therefore, a combination of up to two ADUs and one JADU must be approved per single-family dwelling if the relevant requirements are met. Therefore, the City must amend its

ordinance to allow for a combination of subdivisions (e)(1)(A) and (B) for applicants with a proposed or existing single-family residence.

- Section 10.44.080 (E)(1)(b) – *Accessory Dwelling Units per Parcel (Multifamily)* – The Ordinance states that on parcels with a multifamily dwelling, an applicant may either convert certain portions of the multifamily dwelling structure to at least one ADU and up to 25 percent of the existing multifamily units or have up to two detached ADUs. However, Government Code section 65852.2, subdivision (e)(1), states that a local agency shall ministerially approve an application to create any of the ADUs listed from subdivision (e)(1)(A) through (D). Subdivision (e)(1)(C) allows for conversion of non-livable space, whereas (e)(1)(D) allows for at least two detached ADUs. Therefore, the City must amend the Ordinance to allow for a combination of subdivision (e)(1)(C) and (D) for applicants with a proposed or existing multifamily residence.
- Section 10.44.080 (E)(1)(a)(i), (E)(1)(b)(ii), (E)(6)(d) – *ADU Permit Standards* – The Ordinance states that JADUs may be developed on sites that feature, among other instances, “[a] new detached accessory dwelling unit not larger than 800 square feet or more than 16 feet high....” However, Government Code section 65852.2, subdivisions (c)(2)(D)(ii) and (iii), effective January 1, 2023, increases the minimum height requirements for detached ADUs to 18 feet on a lot with an existing or proposed single-family or multifamily unit that is within a half-mile of a major transit stop or a high-quality transit corridor, and 18 feet on a lot with an existing or proposed multifamily, multistory dwelling. Therefore, the City must amend the Ordinance to comply with State ADU Law.
- Section 10.44.080 (E)(1)(b)(i), (E)(22)(b), (G)(5) and section 4, sub-section 13 – *Typos and Formatting Errors* – The Ordinance contains what appears to be several instances of typographical and formatting errors, such as in section (E)(1)(a)(ii), when sub-section (b) appears to be indented improperly. HCD recommends fixing these small mistakes.
- Section 10.44.080 (E)(3) – *Kitchen and Bathroom Facilities* – The Ordinance states that ADU kitchen facilities must include: “(b) a refrigerator of more than five cubic feet capacity; and (c) a range or fixed cooktop.” Government Code section 65852.2, subdivision (a)(1)(B)(i), authorizes local agencies to impose objective standards on ADUs. However, Government Code section 65852.2, subdivision (e)(1), states that a local agency shall ministerially approve an application to create any of the ADUs listed from subdivision (e)(1)(A) through (D). The requirements in section (E)(3) of the Ordinance may not be imposed on ADUs created under Government Code section 65852.2, subdivision (e). Therefore, the City must amend the Ordinance to comply with State ADU Law.
- Section 10.44.080 (E)(6)(d) – *Front Yard Setbacks* – The Ordinance states: “Limits on lot coverage, floor area ratio, open space, and size shall be waived if

necessary to allow an 800 square foot detached or attached accessory dwelling unit 16 feet high with four-foot side and rear yard setbacks, provided that the proposed accessory dwelling unit is in compliance with all other development standards, including but not limited to front yard setbacks.” (Emphasis added.) However, effective January 1, 2023, Government Code section 65852.2, subdivision (c)(2)(C), prohibits local agencies from establishing “[a]ny 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...” Therefore, a front setback requirement may not preclude a minimum 800 square foot detached or attached ADU. The City must amend the Ordinance to comply with State ADU Law.

- Section 10.44.080 (E)(7)(b) – *Maximum and Minimum Unit Size* – The Ordinance states that floor area for interior ADUs on parcels that do not contain single-family dwellings “shall be no less than an efficiency unit defined in California Health and Safety Code Section 17958.1 and no greater than 40 percent of the primary dwelling unit up to a 1,000-square-foot maximum.” However, Government Code section 65852.2, subsection (e)(1)(C), states that local agencies shall ministerially approve an application for multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings. These ADUs are not subject to any size maximum or minimum provided they meet the criteria of non-livable space within the structures. Therefore, the City must remove the maximum size limitations to comply with State ADU Law.
- Section 10.44.080 (E)(8) – *Height* – The Ordinance prescribes a height requirement for attached units pursuant to Chapter 10.40 SMC, and for detached units as either 11, 14, or 16 feet as applicable based on type of roof or construction above or below an existing or proposed accessory structure, and in compliance with Chapter 10.40. However, as mentioned above, Government Code section 65852.2, subdivision (c)(2)(D), requires that the City set the minimum height limitation for an attached or detached ADUs at either 16, 18, 20, or 25 feet, depending on the applicable provision in subdivision (c)(2)(D). The City must amend the minimum height requirement in the Ordinance to comply with State ADU Law and ensure that these height requirements would apply notwithstanding Chapter 10.40 SMC.

- Section 10.44.080n (E)(10) – *Views* – The Ordinance states: “An accessory dwelling unit shall not block or obstruct primary views, as defined in Chapter 10.88 SMC, from neighboring properties.” Although an adopted ADU Ordinance may allow a local agency to develop or establish certain objective development standards¹, those standards may not exceed standards contained within ADU statute or impede the creation of ADUs. Terms such as “block or obstruct primary views” are subjective. Government Code section 65852.2, subdivision (a)(3), 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....” Such subjective terms therefore violate state statute. Furthermore, Government Code section 65852.2, subdivision (a)(8), states that “no additional standards, other than those provided in this subdivision, shall be used or imposed.” “Obstruction of primary views” does not fall within statute. Therefore, the City must amend the Ordinance to remove this requirement.
- Section 10.44.080 (E)(11) & (E)(12) – *Privacy, Light, and Shadows* – The Ordinance requires that ADUs “be designed so that its exterior windows, decks, and doors are not directly opposite the exterior living areas (e.g., decks or patios) or windows or doors to interior living areas of adjoining properties.” The Ordinance also states: “An ADU shall be designed such that the incremental light/shadow impact created by the accessory dwelling unit does not impact more than 25 percent of an adjacent parcel more than 30 days per year.” However, 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 subdivision (e). Therefore, the City must remove these design requirements or note their exceptions.
- Section 10.44.080 (E)(22) – *Sale* – The Ordinance states that “[a]ccessory dwelling units shall not be sold separately from the primary dwelling unit.” However, Government Code section 65852.26 creates a narrow exception to allow separate conveyance of an ADU to a qualified buyer if the ADU or primary dwelling was built or developed by a qualified non-profit corporation, among other things. The City must amend the Ordinance to allow for this exception.

¹ “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. (Cal. Gov’t Code § 65852.2, subd. (j)(7).)

- Section 10.44.080 (E)(22) – *Utilities and Impact Fees* – The Ordinance states that separate electric and water meters shall be required for the second unit (which may refer to either ADUs or JADUs). However, such a requirement may only be applied to units not subject to Government Code section 65852.2, subdivision (e)(1)(A), per subdivision (f)(4). Government Code section 65852.2, subdivision (e)(1)(A)(i), applies to ADUs or JADUs “within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure.” Although the Ordinance in subsection c. provides an exception for “Interior accessory dwelling units,” it does not include ADUs created from an existing accessory structure. Therefore, the City must amend the Ordinance to add this exception. Additionally, the Ordinance appears to feature two instances of Section 10.44.080 (E)(22). The City should correct this typographical error.
- Section 10.44.080 (G) – *Amnesty Accessory Dwelling Unit Permit Standards* – The Ordinance has permitted an amnesty period effective March 31, 2019 through December 1, 2021 for nonpermitted ADUs created prior to January 1, 2012. However, Government Code section 65852.23, which became effective January 1, 2023, states that “[n]otwithstanding any other law, and except as otherwise provided in subdivision (b), a local agency shall not deny a permit for an unpermitted accessory dwelling unit that was constructed before January 1, 2018 due to either of the following:” the ADU is in violation of building standards pursuant to Article 1 (commencing with section 17960) of Chapter 5 of Part 1.4 of Division 13, of the Health and Safety Code, or the ADU does not comply with Government Code section 65852.2 or any local ordinance regulating ADUs. Section 10.44.080 (G) also prescribes standards for compliance for an unpermitted ADU to be granted amnesty. Any standard that will be imposed pursuant Section 10.44.080 (G) must comply with State ADU Law, including but not limited to the findings above. Therefore, the City must amend the Amnesty section of the Ordinance in compliance with State ADU Law.
- Section 10.44.085 (B) – *Applicability* – The Ordinance states that JADUs “shall only be allowed within the walls of existing or proposed single-family homes in single-family residential (R-1-20, R-1-8, R-1-6), two-family residential (R-2-5, R-2-2.5), multiple-family residential (R-3), planned residential (PR), houseboats (H) and arks (A) zoning districts.” However, Government Code 65852.22, subdivision (a), states, “Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones.” Therefore, JADUs may only be permitted in single-family residential zones. The City must remove the underlined portions referenced above.

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 Nicolas.Green@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability