

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

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December 9, 2022

Trudi Ryan
Community Development Director
City of Sunnyvale
456 W. Olive Ave
Sunnyvale, CA 94086

Dear Trudi Ryan:

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

Thank you for submitting the City of Sunnyvale's accessory dwelling unit (ADU) Ordinance No. #3176-21 (Ordinance), adopted May 25, 2021, to the California Department of Housing and Community Development (HCD). The Ordinance was received on October 19, 2021. 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 January 6, 2022.

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

- **Section 19.79.020 (c) – Entrances** – The Ordinance states “The entrance to the unit and the entrance to the single-family dwelling shall not be on the same wall plane facing the public street.” However, State ADU law requires that ADUs and Junior Accessory Dwelling Units (JADUs) have an independent entry into the unit. A constraint on the location of an entry door may make the creation of an additional housing unit infeasible (Gov. Code, § 65852.2, subd. (e)(1)(A)(ii) and Gov. Code, § 65852.22, subd. (a)(5)). 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 should revise or remove the section from the Ordinance.
- **Section 19-79-030 (b) – Number of Units** – The Ordinance states “On lots that contain an existing or proposed single-family dwelling, (A) No more than one accessory dwelling unit is allowed per lot, except as provided in subsection

(b)(1)(B) of this section.” However, pursuant to Government Code section 65852.2, subdivisions (e)(1), “Notwithstanding subdivisions (a) to (d), inclusive, 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: (A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling...(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure.”

Moreover subpart (B) permits “One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks.” The use of the term *any* followed by an enumeration of *by right* ADU types permitted indicate that any of these ADU types can be combined on a lot zoned for single family dwellings. This permits a homeowner, who meets specified requirements, to create one converted ADU, one detached, new construction ADU, and one JADU. Therefore, the City must revise the Ordinance to permit the legally required number of units State ADU Law specifies.

- **Section 19.79.30 (c)(5) – Attached ADUs / JADUs** – The Ordinance states, in relation to creating an ADU from interior space within single-family dwellings that, “The side and rear setbacks are sufficient for fire safety and life safety.” While Government Code section 65852.2, subdivision (e)(1)(A)(iii), does codify that an ADU created from interior space must maintain setbacks sufficient for fire and safety, the Ordinance as construed might be applied to a JADU. However, setback requirements cannot be applied to a JADU. The City should note this exception.
- **Section 19.79.30 (6) – JADU Requirements** – The Ordinance states the requirements for the creation of a JADU but omits the requirements for a deed restriction and to have a separate entrance. Government Code section 65852.22, subdivision (a)(1), states that “Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:” (emphasis added). Subdivision (a) enumerates six requirements that the Ordinance shall do. The City must therefore amend the Ordinance to add these missing requirements.
- **Section 19.79.030 (6)(C) – JADU Cooking Appliances** – The Ordinance states “The unit shall include cooking appliances, food preparation counter, *sink*, and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.” (emphasis added). However, the sink requirement, previously specified in Government Code section 65862.22, subdivision (a)(6), was removed. Efficiency kitchen is now defined as “[a] cooking facility with appliances.” (Gov. Code, § 65852.22, subd. (a)(6)(A).) It shall include “[a] food

preparation counter and storage cabinets that are in reasonable size in relation to the size of the junior accessory dwelling unit.” (Gov. Code, § 65852.22, subd. (a)(6)(B)). The City must remove the sink requirement to comply with existing statute.

- **Section 19.79.030 (6)(E) – ADU to JADU Conversion** – The Ordinance states “An accessory dwelling unit that was constructed as a standard accessory dwelling unit shall not be treated as a junior accessory dwelling unit for purposes of this chapter unless the owner complies with the owner-occupancy restrictions in Section 19.79.050.” The City’s provision to allow the conversion of an ADU to a JADU might conflict with Government Code section 65852.22, subdivision (h)(1), which defines a JADU as a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. Therefore, the City should amend the Ordinance to allow for conversion only if the ADU can meet the requirements in Government Code section 65852.22.
- **Section 19.79.030 (d)(1)(B) – Permitted Detached ADUs** – The Ordinance requires as a condition of streamlined ministerial approval for “Newly Constructed, *Detached* Accessory Dwelling Units” that the lot contain either an existing or proposed single-family dwelling or “(B) An existing multi-family dwelling structure.” However, Government Code section 65852.2, subdivision (a)(1)(D)(ii), requires that ADUs be permitted in any lot that is “zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.” (emphasis added). The Ordinance omits that the multifamily dwelling structure can also be a proposed structure. Therefore, the City must revise the Ordinance to state that the primary dwelling can be an existing or proposed single-family or multifamily dwelling on a given lot.
- **Section 19.79.030 (d)(6) and 19.79.040 (d)(2) – Front Setback Prohibition** – The Ordinance prohibits detached ADUs from being located in front of a single-family dwelling or in the required front setback of a multifamily dwelling. Although current statute is silent regarding front setbacks, local standards do not apply to units created subject to Government Code section 65852.2, subdivision (e), which requires jurisdictions to permit ADUs that meet specified criteria *by right*. Moreover, the City should be aware that even under current statute this restriction must not prevent the creation of at least an 800 square foot ADU with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards per Government Code section 65852.2, subdivision (c)(2)(C). Lastly be advised that the enactment of Senate Bill (SB) 897 (Chapter 664, Statutes of 2022) changes State ADU Law which, effective January 1, 2023, clarifies specifically that front setbacks cannot preclude at least an 800 square foot ADU with four-foot side and rear yard setbacks permitted under subdivisions (a) - (d), to be constructed in compliance with all other local development standards. Therefore, the City must remove this section.

- **Section 19.79.040 (a) – Zoning Districts** – The Ordinance indicates that a “miscellaneous plan permit” be ministerially approved if “...the lot contains an existing or proposed single-family dwelling located in the R-0, R-1, R-1.5, R-1.7/PD, R-2, or residential DSP zoning districts.” The discrete and limited list of permitted zones is potentially problematic, as Government Code section 65852.2, subdivision (a)(1), states that ADUs are permitted in “areas zoned to allow single-family or multifamily dwelling residential use”. Therefore, the City should amend the ordinance to allow ADUs in all areas zoned for residential use.
- **Section 19.79.040 (c)(2) – Maximum Size** – The Ordinance states the total size of an ADU be “No more than eight hundred fifty square feet gross floor area, or one thousand square feet gross floor area if the unit has two bedrooms. However, if the accessory dwelling unit is attached to an existing single-family dwelling, the floor area of the accessory dwelling unit shall not exceed fifty percent of the existing single-family dwelling.” However, Government Code section 65852.2, subdivision (c)(2)(C), prohibits “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.” This section as written omits the minimally allowed size of an ADU. Therefore, the City must amend the Ordinance to permit an ADU of at least 800 square feet.
- **Section 19.79.040 (e) – Nonconforming Zoning Conditions** – The Ordinance states that “Applicants may be required to correct non-conforming zoning conditions on the lot before approval of the accessory dwelling unit.” However, Government Code section 65852.2, subdivision (e)(2), states, “A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.” Moreover, SB 897, effective January 1, 2023, changes State ADU Law to further preclude a jurisdiction from not permitting an ADU for non-conforming conditions as well as other conditions as specified. Therefore, the City must remove any provision requiring correction of nonconforming zoning conditions as a condition of ministerial approval.

While the Ordinance addresses dwelling units resulting from lot splits, HCD's review is limited to compliance with Government Codes sections 65852.2 and 65852.22 and does not include a review of compliance with Government Code sections 65852.21 and 66411.7¹.

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, appearing to read "Shannan West", written in a cursive style.

Shannan West
Housing Accountability Unit Chief

¹ Section 19.79.020 (h) of the Ordinance states "A lot created through an urban lot split pursuant to Chapter 18.26 of this code may have a maximum of one accessory dwelling unit in conjunction with one single-family home on the lot. If the lot contains two dual urban opportunity units, no accessory dwelling units are permitted on the lot." However, the Ordinance does not allow for a combination of a JADU with the single-family unit following a lot split. The City should amend the Ordinance to allow for either an ADU or JADU in combination with the single-family home to reach the two-unit cap following a lot split (Gov. Code, § 66411.7, (j)(1) and (2)). For more information, see HCD's SB 9 Fact Sheet: <https://www.hcd.ca.gov/docs/planning-and-community-development/sb9factsheet.pdf>.