

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



October 4, 2023

Brent Cooper, Community Development Director
Community Development Department
City of American Canyon
4381 Broadway St, Suite 201
American Canyon, CA 94503

Dear Brent Cooper:

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

Thank you for submitting the City of American Canyon (City) accessory dwelling unit (ADU) Ordinance No. 2023-03 (Ordinance), adopted April 4, 2023, to the California Department of Housing and Community Development (HCD). HCD appreciates the speed with which the Ordinance was adopted following HCD's Letter of Technical Assistance dated February 7, 2023. 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 November 3, 2023.

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

- **19.39.040 – Definitions** – The Ordinance defines an “Accessory Dwelling Unit” as having “one thousand two hundred square feet or less....” However, Government Code section 65852.2, subdivision (j)(1), defines an “Accessory Dwelling Unit” as “an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence.” Although the City may impose maximum sizes for ADUs, some types of ADUs may not have size limitations. For example, ADUs created pursuant to Government Code section 65852.2, subdivision (e)(1)(A), (C), and (D) do not have size limitations. Therefore, the City must remove or amend the referenced Ordinance language.

- 19.39.050 (C) – *Unit Allowance* – The Ordinance states, “One detached accessory dwelling unit and one junior accessory dwelling unit are permitted per single-family parcel.” However, Government Code section 65852.2, subdivision (e)(1), states, “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.” Subparagraph (B) permits “[o]ne 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 junior accessory dwelling unit (JADU). Thus, if the local agency approves an ADU that is created from existing (or proposed) space, and the owner subsequently applies for a detached ADU (or vice versa) that meets the size and setbacks pursuant to the subdivision, the local agency cannot deny the application, nor deny a permit for a JADU under this section. HCD notes that the Legislature, in creating the list, did not use “or” or “one of” to indicate only one or another would be applicable to the exclusion of the other. This subdivision applies equally to ADUs created pursuant to Government Code section 65852.2, subdivisions (e)(1)(C) and (D), on lots with proposed or existing multifamily dwellings. Limiting single-family lots to one ADU would prevent property owners from creating ADUs by-right under subdivision (e)(1). The City must amend the Ordinance to comply with State ADU Law.

- 19.39.050 (D) – *Multifamily* – The Ordinance states, “A single-family primary residence dwelling must exist on the parcel before the accessory dwelling unit is built or it shall be built concurrently with the accessory dwelling unit.” The Ordinance refers only to single-family primary dwellings, although the City later addresses ADUs with multifamily dwellings. Government Code section 65852.2, subdivision (a)(1)(D)(ii), requires ADUs be permitted on a lot “zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.” Therefore, the City must amend the Ordinance to add “multifamily” to this sentence to comply with statute.
- 19.39.050 (F)(1) – *Size Maximums* – The Ordinance states, “Detached accessory dwelling units shall not exceed one thousand two hundred square feet....” However, state statute does not permit a maximum size to be applied to any converted unit or to a new construction detached unit on a lot with a

multifamily primary dwelling. (Gov. Code, § 65852.2, subds. (e)(1)(A), (C), and (D)). The City must allow these exceptions.

- 19.39.050 (G)(2)(ii) – *Fire Sprinklers* – The Ordinance states, “When the primary residence does not have fire sprinklers, the junior accessory dwelling unit and attached accessory dwelling unit do not require fire sprinklers unless the junior accessory dwelling unit or attached accessory dwelling unit increases the size of the house by at least fifty percent.” However, Government Code section 65852.2, subdivision (a)(1)(D)(xii), states, “Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.” Therefore, the City must remove “unless the junior accessory dwelling unit or attached accessory dwelling unit increases the size of the house by at least fifty percent” from the Ordinance.
- 19.39.050 (J) – *Multifamily Format Allowance* – The Ordinance states, “The building division shall review and approve ministerially accessory dwelling units under the following conditions...” before describing units subject to Government Code section 65852.2, subdivision (e)(1)(C) in (J)(1) and units subject to subdivision (e)(1)(D) in (J)(2). However, the Ordinance omits ADUs created with multifamily units pursuant to Government Code section 65852.2, subdivision (a)(1)(D)(ii), which allows for ADUs with both single-family and multifamily primary dwellings. The City must amend the Ordinance to comply with statute.
- 19.39.050 (J)(2) – *ADUs Within Existing Multi-Family Dwelling Units* – The Ordinance states, “An existing multifamily dwelling shall be permitted to accommodate additional accessory dwelling units in an amount up to twenty-five percent of the existing multifamily dwelling units.” However, Government Code section 65852.2, subdivision (e)(1)(C)(ii), clarifies that “[a] local agency shall allow at least one accessory dwelling within an existing multifamily dwelling....” Therefore, the City must amend the Ordinance to clarify that a minimum of one accessory dwelling unit is allowed.
- 19.39.060 (A)(1) and (2) – *JADU Kitchen* – The Ordinance states, “Electric service may not exceed one hundred and twenty volts,” “No appliance may be fueled with natural gas or propane,” and “The kitchen sink waste line may not exceed one and one-half inches.” However, Government Code section 65852.22, subdivision (a)(6)(A), requires only “[a] cooking facility with appliances” in JADUs. Language regarding gas lines, 220v connections, and kitchen sink waste line was specifically removed from the statute. Therefore, these requirements do not comply with State ADU Law, and the City must remove these sections.
- 19.39.070 (C)(2) – *Parking Standards* – The Ordinance states, “Notwithstanding subsection (C)(1), on-site parking is not required when...,”

then lists a total of four exceptions. However, Government Code section 65852.2, subdivision (d)(1)(E) and (F), provide additional exceptions: “(E) When there is a car share vehicle located within one block of the accessory dwelling unit. (F) When a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit or the parcel satisfies any other criteria listed in this paragraph.” Therefore, the Ordinance must be amended to include the additional exceptions.

- 19.39.090 (A) – *Design Standards* – The Ordinance states, “The accessory dwelling unit shall comply with any City adopted objective design standards applicable to ADUs.” The Ordinance does not mention or list any such standards. Any design standards promulgated by the City must meet the definition of objective standards pursuant to Government Code section 65852.2 (j)(7), which states, “‘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.” Also, local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), cannot preclude the approval of ADUs created under subdivision (e). The City must amend the Ordinance to allow for this exception and to list any objective criteria applicable to ADU development.
- 19.39.100 (A) – “*Shall Act*” – The Ordinance states that “the building division shall act on an application to create an accessory dwelling unit... within 60 days...” However, current Government Code section 65852.2, subdivision (a)(3), requires that any “permitting agency **shall either approve or deny** the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days...” (Emphasis added.) As “shall act” was specifically changed to “shall approve or deny” in recent updates to ADU Law, the City must amend the language to align with state statute. Additionally, Government Code section 65852.2, subdivision (a)(3)(B), adds that if the City denies a permit application for an ADU, it must provide the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant. The City should add this provision to the Ordinance.

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 contact Mike Van Gorder, of our staff, at (916) 776-7541 or at mike.vangorder@hcd.ca.gov if you have any questions or would like HCD's technical assistance in these matters.

Sincerely,

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

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability