

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

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January 17, 2024

Jim Morrissey, City Planner  
Planning Department  
City of Canyon Lake  
31516 Railroad Canyon Road  
Canyon Lake, CA 92587

Dear Jim Morrissey:

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

Thank you for submitting the City of Canyon Lake (City) accessory dwelling unit (ADU) Ordinance No. 229 (Ordinance), adopted 02/08/2023, to the California Department of Housing and Community Development (HCD). The Ordinance was received on 03/03/2023. 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 February 17, 2024.

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

- Chapter 9.32 – *By Right Units* – The Ordinance does not have a section dedicated to units as described in Government Code section 65852.2, subdivision (e)(1), nor the appropriate provisions to address the requirements. Pursuant to Government Code section 65852.2, subdivision (e)(1), the following must be reviewed and approved ministerially, notwithstanding standards pursuant to subdivision (a)-(d).:
  - (A) One ADU within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure, and junior accessory dwelling unit (JADU) per lot with a proposed or existing single-family dwelling.
  - (B) One detached, new construction, 800 square foot ADU that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling.

- 9.32.010– *Existing Structures* – The Ordinance states ““Accessory dwelling unit (ADU)” means a residential dwelling unit that is either attached, detached or incorporated within an existing legally constructed structure , which provides complete independent living facilities for one or more persons” However, Government Code section 65852.2, subdivision (j)(1), defines an ADU 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. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated.” Imposing a qualifier on the term ‘existing structure’ where one does not exist in statute would not follow State ADU Law. Therefore, the City must amend this definition to comply with the definition found in statute.
- 9.32.050 – *On-site Parking Exceptions* – The Ordinance lists several exceptions to parking requirements for ADUs which correspond to Government Code section 65852.2, subdivisions (d)(1)(A) through (d)(1)(E), however, the Ordinance section is missing the exception listed in (d)(1)(F), which states “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.” By not including this provision, the Ordinance is more restrictive than State ADU Law. Therefore, the City must add the parking exception as listed in Government Code section 65852.2, subdivision (d)(1)(F).
- 9.32.060 – *Parking Location* – The Ordinance states “...the parking space must meet the minimum required turning radius and backup distance as noted in the Municipal Code.” However, Government Code section 65852.2, subdivision (a)(7) states, “No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.” Requiring specific parking dimensions outside of the minimum required under the California Building Code (CBC) and California Residential Code (CRC) is not in compliance with State ADU Law. Therefore, the City must amend this section and refer to the CBC and CRC.
- 9.32.070(e), 9.32.100(a), (b), (d), (f) – *Discretionary Review, Subjective Criteria* – The Ordinance describes non-ministerial reviews and standards which are not objective and independently verifiable in several sections of the code, such as “Consistent with the overall architectural design,” “Compatible,” “Determined by the City Planner,” and “Building Division will determine....” Government Code section 65852.2, subdivision (a)(1)(B)(i) states, that a local agency may “impose objective standards on accessory dwelling units that include, but are not limited 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.” Pursuant to this section, only objective standards may be applied to ADUs. Objective standards are defined in Government Code section 65852.2, subdivision (j)(7) as “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.” Additionally, Government Code section 65852.2, subdivision (a)(3)(A) states, “A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review...” Applying discretionary reviews and subjective standards to ADU applications is not compliant with State ADU Law. Therefore, the City must amend these sections to provide only objective standards and a ministerial process.

- 9.32.080, (b), (c) – *Height, Stories* – The Ordinance lists multiple height restrictions, some of which are not in line with statute, such as “All new detached accessory dwelling units, not constructed on top of a detached garage or accessory structure shall be no more than one (1) story with a maximum top of plate height of 12 feet as measured from grade level and a maximum height of 17 feet to any architectural features.” Government Code section 65852.2, subdivision (c)(2)(D)(iii), requires the City to allow for a minimum height of “18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.” Limiting the height for eligible ADUs, or the stories for those which are attached would not comply with State ADU Law. Therefore, the City must amend this section to allow for these provisions.

Additionally, the Ordinance states “When an accessory dwelling unit is constructed on top of a detached garage, accessory structure, or above another accessory dwelling unit when applicable under this Code, the maximum top of plate height cannot exceed 16 feet.” While this is not necessarily contradictory to State ADU Law, it may impose a height less than provided in Government Code section 65852.2, subdivision (c)(2)(D). There is no maximum height addressed in the Ordinance for ADUs created above detached accessory structures. Therefore, the City should include objective standards and provisions for the maximum height for all ADUS.

- 9.32.090 (b), (c) – *Setbacks, Existing Structures* – The Ordinance states “Any new accessory dwelling unit cannot be located closer to the front property line than the prevailing front yard setback for a single family residential zoned lot or minimum required front setback for a multifamily residential zoned lot. An exception to this requirement would be to allow the conversion of existing legal nonconforming building footprint of the main structure or attached accessory structure into an accessory dwelling unit within the main structure that is located within the front yard setback.” The Ordinance also states, “When a garage or other accessory structure exists and is legally permitted with City building permits, the existing legal nonconforming setback of the garage or other accessory

structure can be maintained. The required minimum four-foot rear and side yard setbacks shall still apply to all added space that goes beyond the existing building footprint and/or building envelope of the garage or other accessory structure.” However, Government Code section 65852.2, subdivision (j)(2), defines an accessory structure as “a structure that is accessory and incidental to a dwelling located on the same lot.” No qualifier such as ‘legal’ or ‘permitted’ is attached to this definition, and imposing additional requirements upon them would not be compliant with State ADU Law. Therefore, the City must amend this section to adhere to the definition of ‘accessory structure.’

- 9.32.100 (c) – *Compatible Features* – The Ordinance states “All accessory dwelling unit facade elevations visible from any public right of way must provide entries, windows, or other architectural features compatible with the existing primary dwelling unit.” However, Government Code 65852.2, subdivision (a)(1)(B)(i) states, “[a] local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
- Impose objective standards on accessory dwelling units that include, but are not limited 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. These standards shall not include requirements on minimum lot size.”

A local agency may only apply objective standards, as defined in Government Code section 65852.2, subdivision (j)(7) as, “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.” The City must amend the Ordinance to comply with State ADU Law.

- 9.32.100 (e) – *Applicable Provisions* – The Ordinance states, “The design and construction of each accessory dwelling unit shall conform to all applicable provisions of the City Municipal Code and other adopted regulations.” However, Government Code section 65852.2, subdivision (a)(7) states, “[n]o other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.” Therefore, the City must amend the Ordinance to comply with State ADU Law.
- 9.32.110 (b) – *Number of ADUs, Multifamily* – The Ordinance states, “The number of accessory dwelling units so created shall be up to 25% of the existing multifamily dwelling units in the multifamily dwelling structure.” This appears to be addressing the provisions of Government Code section 65852.2, subdivision (e)(1)(C), however, it does not also include the provisions within subdivision (e)(1)(C)(ii), which states “A local agency shall

allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.” Pursuant to this subdivision, at least one ADU created from existing space within a multifamily dwelling structure must be allowed. Refusing to allow for at least one such conversion would preclude ADUs in 2-3 family multifamily dwellings from converting existing space which is currently not used as livable space into an ADU under subdivision (e)(1)(C). Therefore, the City must amend this section to allow for a minimum of one ADU to be created from existing space within a multifamily dwelling structure that is not currently livable space.

- 9.32.120 (b) – *JADU Zoning* – The Ordinance states, “One junior ADU is allowed per residentially zoned lot that includes an existing or proposed single-family dwelling unit structure.” However, Government Code section 65852.22, subdivision (a), states “a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones.” Since ‘residentially zoned’ includes multifamily lots, and JADUs are not permissible within multifamily lots, this subdivision is not in compliance with State ADU Law. Therefore, the City must amend this section to only allow for JADUs only within single-family zones.
- 9.32.120(e) – *JADU Construction* – The Ordinance states, “The junior ADU must be constructed within the existing walls of the single-family residence.” However, Government Code section 65852.22, subdivision (a)(4), states that the Ordinance must “[r]equire a permitted junior accessory dwelling unit to be constructed within the walls of the **proposed** or existing single-family residence.” The JADU may be constructed in tandem with a single-family dwelling. Requiring the JADU to be constructed within existing walls restricts JADUs created alongside a proposed single-family dwelling. Additionally, subdivision (a)(4) continues with, “[f]or purposes of this paragraph, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” The Ordinance must allow for a JADU to be created within enclosed spaces such as attached garages in addition to the space of the single-family residence. Therefore, the City must amend this subdivision to allow for JADUs within a proposed or existing single-family dwelling, as well as any enclosed uses within the residence.
- 9.32.120 (f) – *JADU Entrances* – The Ordinance states “The junior ADU must include a separate entrance from the main entrance to the single-family residence and an interior entry to the main living area. A second interior doorway may be provided for sound attenuation.” However, Government Code section 65852.22, subdivision (a)(5)(B) states, “[i]f 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.” The interior access is limited only when the JADU does not have a separate bathroom. Therefore, the City must amend this language to reflect the provision on interior access.

- 9.32.120 (l) – *Restrictive Covenants* – The Ordinance states, “A junior ADU requires owner-occupancy as follows: The owner shall reside in either the remaining portion of the single-family residence or the newly created junior ADU. This provision does not apply if the owner is a governmental entity, land trust or housing organization. The property owner shall enter into a restrictive covenant memorializing this restriction with the City that applies to the owner and all successors in interest, in a form acceptable to the City Attorney that will be recorded on the subject property.” However, Government Code section 65852.22, subdivision (a)(3) states, “[t]he ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.”

While there is an owner-occupancy requirement with some exceptions on JADUs, the deed restriction may only pertain to the separate sale, size, and attributes of the JADU. Requiring a deed restriction for the owner-occupancy requirement would not be compliant with State ADU Law. Therefore, the City must amend this section to only require the deed restrictions provided in statute.

- 9.32.140 – *Separate Conveyance* – The Ordinance states “Any accessory dwelling unit may be rented separate from the primary residence but may not be sold or otherwise conveyed separate from the primary residence.” However, Government Code section 65852.26, creates a narrow exception to allow separate conveyance of an ADU to a qualified buyer. Preventing the sale of ADUs pursuant to Government Code section 65852.26, is not in compliance with State ADU Law. Therefore, the City must allow for this exception. Please note that recent amendments to the statute now provide for a local agency to allow the separate sale or conveyance of a primary dwelling and an ADU as condominiums pursuant to Government Code section 65852.2, subdivision (a)(10).

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 Tyler Galli, of our staff, at (916) 776-7613 or at

[Tyler.Galli@hcd.ca.gov](mailto:Tyler.Galli@hcd.ca.gov).

Sincerely,

A handwritten signature in black ink that reads "Jamie Candelaria". The script is cursive and fluid, with the first letter of each word being capitalized and prominent.

Jamie Candelaria  
Senior Housing Accountability Unit Manager  
Housing Policy Development Division