

**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 3, 2023

Nicholas S. Liguori
Director of Development Services
City of Chino
13220 Central Ave
Chino, CA 91710

Dear Nicholas S. Ligouri:

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

Thank you for submitting the City of Chino's (City) accessory dwelling unit (ADU) Ordinance, Number 2020-006, adopted March 17, 2020, to the California Department of Housing and Community Development (HCD). The Ordinance was received on April 15, 2020. HCD has reviewed the Ordinance and provides these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD has determined the Ordinance does not comply with section 65852.2 in the manner noted below. Under this 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 2, 2023.

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

- Table 20.04-1 Section 1 – *Potentially Limited Zoning* – The Ordinance specifically lists the zones that permit ADUs, with ADUs and junior accessory dwelling units (JADUs) being permitted in RD1, RD2, RD4.5, and RD.8. However, Government Code section 65852.2, subdivision (a), permits ADUs in areas zoned to allow single-family and multifamily housing. Hence, ADUs may be allowed in zones, such as agricultural, commercial, or mixed-use zones if residential is allowed. Chapter 20.05 of the Chino Municipal Code states that Mixed Use Zones (MU) “[p]rovide appropriate locations for mixed use development containing both housing and commercial uses to meet the housing, commercial and office needs of Chino residents.” Therefore, Table 20.04-1 is not accurate regarding the zones where ADUs are permitted. The City should remove the potentially limiting tables and/or state as an amendment that, “ADUs are permitted in any zone that permits residential development.”

- Section 6 Table 20.09-3, Footnote {1} – *Parking* – The Ordinance requires two garage spaces for the primary dwelling unit prior to the issuance of a building permit for an ADU “and its required parking.” However, Government Code section 65852.2, subdivision (a)(1)(D)(x)(I), states that “[p]arking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less,” and Government Code section 65852.2, subdivision (d), states that a jurisdiction “shall not impose parking standards for an accessory dwelling unit in any of the following instances”:
 - (1) The accessory dwelling unit is located within one-half mile walking distance of public transit.
 - (2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
 - (3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
 - (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
 - (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

Furthermore, per Government Code section 65852.2, subdivision (e)(2), “[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.” Nonconforming zoning conditions means “a physical improvement on a property that does not conform with current zoning standards.” (Gov. Code, § 65852.2, subd. (j)(6).) In as much as the Ordinance requires parking to correct a nonconforming zoning standard, the Ordinance section would violate State ADU Law. Therefore, the City must remove this footnote.

- Section 10, 20.11.020 (B)(3) – *Unit Allowance* – The Ordinance states, “No more than one accessory dwelling unit and one junior accessory dwelling unit are allowed on any lot with an existing or proposed single-family residence.” 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 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). Therefore, the City must amend the Ordinance to comply with State ADU Law.

- Table 20.11-2; Table 20.11-3 – *Size Restrictions* – The Ordinance limits the size of ADUs to “50% of the existing primary dwelling structure or 1,200 square feet, whichever is less.” 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 that is at least 18 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” Therefore, ADUs subject to a 50-percent size limitation must be allowed to be at least 800 square feet. The City must change the language to reflect State ADU Law.
- Table 20.11-2 – *Height* – The Ordinance states that the maximum height for ADUs and JADUs is “1 story and up to 16 feet.” However, State ADU Law restricts local agencies from requiring the height of attached and detached ADUs to be less than either 16, 18, or 25 feet, pursuant to Government Code section 65852.2, subdivisions (c)(2)(D) and (e)(1)(B)(ii). The City must update its height restrictions in accordance with State ADU Law.
- Table 20.11-2, 7 & 11 – *Separate Sale* – The Ordinance prohibits the separate sale of an ADU from its respective primary dwelling. However, Government Code section 65852.26, subdivision (a)(1), creates a narrow exception to allow separate conveyance if the ADU or primary dwelling was built by a qualified nonprofit housing organization and the ADU is conveyed to a qualified buyer. The City must amend the table to allow for such an exception.
- Table 20.11-3, 2; Section 12 A. 8 – *Floor Area Ratio & Conditional Use Permit* – The Ordinance states that for “Habitable accessory structures,” “the maximum size of the structure shall be one thousand two hundred (1,200) square feet

except that the planning commission may approve a larger structure with a special conditional use permit.” However, local development standards provided by the Ordinance pursuant to subdivisions (a) through (d) may not limit ADUs created under Government Code section 65852.2, subdivisions (e)(1)(A), (e)(1)(C), and (e)(1)(D). The City must note the exceptions.

- Section 12. A; Table 20.09-3; Table 20.11-2; Table 20.11-3 – *Setbacks* – The Ordinance establishes various setback requirements depending on the underlying base zoning. Table 20.09-3 establishes that in the “Downtown overlay district,” rear setbacks are 15 feet and street side setbacks are 10 feet; Table 20.11-2 establishes that setbacks on the “front/street side” are the “same as the main building”; and Table 20.11-3 establishes that interior and street side setbacks in RD 1, RD 2, RD 12, RD 14, and RD 20 and street side setbacks in RD 4.5 and RD 8 are “same as the main building” and that interior side setbacks in RD 4.5 and RD 8 are five feet. However, Government Code section 65852.2, subdivision (a)(1)(D)(vii), states, “No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.” Therefore, the maximum side and rear setbacks permissible are four feet, and conversions are exempt. The City must update the tables accordingly.
- Section 19 (E) – *Zoning Clearance* – The Ordinance states, “The Development services director or the director’s designee shall act on an application to create an accessory dwelling unit or junior accessory dwelling unit within 60 days....” However, current Government Code section 65852.2, subdivision (b), requires that “the permitting agency **shall approve or deny** the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application.” (Emphasis added.) The Ordinance’s use of the phrase “shall act” no longer reflects State ADU Law. Therefore, the City must amend the language to comply with State ADU Law.

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 Mike Van Gorder, of our staff, at (916) 776-7541 or at mike.vangorder@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