

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

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July 13, 2023

Noah Housh, Director
Department of Community Development
City of Cotati
201 W Sierra Avenue
Cotati, CA 94931

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

Dear Noah Housh:

Thank you for submitting the City of Cotati (City) accessory dwelling unit (ADU) Ordinance No. 893 (Ordinance), adopted April 14, 2020, 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 August 11, 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 17.42.170 subdivision (A)(1) – *Number of ADUs Allowed* – The Ordinance provides one ADU and one junior accessory dwelling unit (JADU) may be developed on a residentially-zoned parcel with a proposed or existing single-family dwelling. The categories of ADUs under Government Code section 65852.2, subdivisions (e)(1)(A) and (e)(1)(B), may be combined, so single-family residences are allowed three ADU's: one ADU and one JADU under subdivision (e)(1)(A), and another detached 800 square foot ADU under subdivision (e)(1)(B). The Ordinance must be amended consistent with these provisions.
- Section 17.42.170 subdivisions (A)(2), (B)(4)(b)(ii), (B)(4)(b)(iii), & (B)(5) – *ADU Height Limitations* – The Ordinance makes numerous references to maximum height allowances for ADUs. However, Senate Bill (SB) 897 (Chapter 664, Statutes of 2022) made effective Government Code section 65852.2, subdivision (c)(2)(D), et seq., on January 1, 2023, increases maximum height limitation that may be imposed by a local agency on an ADU to 18 feet if the

ADU is within one half-mile walking distance of a major transit stop or a high-quality transit corridor or the ADU is detached and on a lot that has an existing multifamily, multistory dwelling. SB 897 also increases maximum height limitation that may be imposed by a local agency on an ADU to 25 feet if the ADU is attached to a primary dwelling. Therefore, the City must update its allowances of maximum height limitations to reflect changes to State Law.

- Section 17.42.170 subdivision (A)(6) – *JADU Owner Occupancy* – The Ordinance states: “Owner-occupancy of an ADU/JADU or its primary residence is not required.” While owner occupancy is not required for ADUs, Government Code section 65852.22, subdivision (a)(2), requires owner-occupancy in the single-family residence in which the JADU will be permitted, unless the owner is another governmental agency, land trust, or housing organization. Therefore, the City must modify this language to make clear the owner-occupancy requirement for JADUs.
- Section 17.42.170 subdivision (B)(3) – *Separate Entrance, Kitchen, and Bathroom* – The Ordinance requires a separate kitchen and bathroom for each ADU. Government Code section 65852.2, subdivision (j)(1), defines ADUs to include an “efficiency unit.” Efficiency units may include partial kitchens and bathrooms. (Health & Safety Code, §by 17958.1, subd.(a).) The Ordinance must be amended to clarify ADUs may have partial kitchens and bathrooms if the ADU satisfies the requirements of an efficiency unit under Health and Safety Code section 17958.1.
- Section 17.42.170 subdivisions (B)(4)(b)(i) and (B)(4)(b)(iii) – *Setback Requirements* – The Ordinance states that “No ADUs shall be constructed within the front setback,” as well as that “Attached or detached ADUs... shall be subject to the same minimum front, side, and rear setback requirements as the primary residence.” (emphasis added). However, Government Code section 65852.2, subdivision (a)(1)(D)(vii), states that: “....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.” Further, Government Code section 65852.2, subdivision (c)(2)(C), prohibits any front setback requirement that does not permit at least an 800 square foot ADU with four-foot rear and side setbacks. Any constriction based on front setback requirements for development of new ADUs that does not allow at least 800 square feet for an ADU with four-foot side and rear setbacks violates state statute. The Ordinance must be amended to be consistent with State ADU Law.
- Section 17.42.170 subdivision (B)(6) – *Size-related ADU Requirements* – Subsection (B)(6) of the Ordinance enumerates size restrictions on ADUs related to

lot size. However, Government Code section 65852.2, subdivision (c)(2)(C), prevents local agencies from establishing “[a]ny 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 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” (Emphasis added.) Therefore, the City must remove these references.

- Section 17.42.170 subdivision (B)(6)(c) – *Maximum Size* – The Ordinance states that “[i]n no case shall any ADU exceed 1200 square feet.” However, size maximums do not apply to converted units, as 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), and only new construction detached ADUs in subdivisions (e)(1)(B) and (e)(1)(D) have a size limit of 800 square feet stated therein. The City must add this exception to the Ordinance.
- Section 17.42.170 subdivision (B)(9) – *Windows* – The Ordinance states that windows must be obscured or clerestory “[f]or an ADU located within the required setbacks of the primary residence...” 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). The City must add these exceptions to the Ordinance.

Section 17.42.170 subdivision (C)(3) – *JADU Expansion* – The Ordinance permits an expansion of 150 square feet for JADU ingress. However, Government Code section 65852.22, subdivision (a)(4), requires that JADU ordinances “require a permitted junior accessory dwelling unit to be constructed within the walls of the proposed or existing single-family residence.” Therefore, an expansion for JADUs is not permitted. The City must remove this reference.

- Section 17.42.170 subdivision (C)(5) – *JADU Bathroom* – The Ordinance provides a JADU may share sanitation facilities with the primary residence. Government Code section 65852.22, subdivision (a)(5)(B), requires a separate entry for a JADU to the main living area if the JADU does not include a separate bathroom. The City must add this requirement to the Ordinance.
- Section 17.090.020 (F) – *Floor Area Definition* – The Ordinance defines “[f]loor area” differently from the California Building Code (CBC), which defines floor area as “[t]he floor area within the inside perimeter of the exterior walls of the building under consideration, exclusive of vent shafts and courts, without deduction for corridors, stairways, ramps, closets, the thickness of interior walls, columns or other features. The floor area of a building, or portion thereof,

not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above. The gross floor area shall not include shafts with no openings or interior courts.” (California Building Code, Chapter 2, Section 202). HCD recommends adopting the CBC definition of “floor area” to maximize consistency with floor area measurement for ADU development purposes.

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 Nicholas.Green@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" written in a larger, more prominent script than the last name "West".

Shannan West
Housing Accountability Unit Chief