

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

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May 30, 2024

Sarah Fleming, Director
Planning Division
Town of Hillsborough
1600 Floribunda Ave.
Hillsborough, CA 94010

Dear Sarah Fleming:

**RE: Town of Hillsborough's Accessory Dwelling Unit (ADU) Ordinance under
State ADU Law (Gov. Code, §§ 66310 - 66342)**

Please Note: As of March 25, 2024, with the Chaptering of Senate Bill (SB) 477 (Chapter 7, Statutes of 2024), the sections of Government Code relevant to State ADU and junior accessory dwelling unit (JADU) Law have been renumbered (Enclosure 1).

Thank you for submitting the Town of Hillsborough (Town) accessory dwelling unit (ADU) Ordinance No. 787 (Ordinance), adopted December 12, 2022, 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 66326, subdivision (a). HCD finds that the Ordinance does not comply with State ADU and JADU Laws in the manner noted below. Under section 66326, subdivision (b)(1), the Town has up to 30 days to respond to these findings. Accordingly, the Town must provide a written response to these findings no later than June 30, 2024.

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

1. Section 17.52.020 C.1.b – *Unit Allowance* – The Ordinance allows, “One detached, new construction ADU on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established under subsection C.1.a above).” This restricts the combination of an ADU created under C.1.A. with an ADU created under C.1.B.

However, Government Code section 66323, subdivision (a) states, “Notwithstanding Sections 66314 to 66322, 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: (1) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-

family dwelling...(A) 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.” Subdivision (a)(2) 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 a list 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” nor “one of” to indicate only one or another would be applicable to the exclusion of the other.

This subdivision also applies to ADUs created pursuant to Government Code section 66323, subdivisions (a)(3) and (a)(4) 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 State ADU Law. Therefore, the Town must amend the Ordinance to allow all by-right ADU combinations required by State ADU Law.

2. Section 17.52.020 C.1.c – *Incorrect Reference* – The Ordinance, in describing conversions with multifamily dwellings, states, “Under this subsection C.1.a...” However, section C.1.a refers exclusively to converted units with single-family primary dwellings. The Town should correct or remove this reference to promote clarity.
3. Section 17.52.020 D.1.b. – *ADU Permits and Zoning* – The Ordinance states. “An ADU or JADU subject to an ADU permit under subsection C.2. above may be created on a lot that is zoned to allow single-family dwelling residential use.” The Ordinance does not allow for ADUs, subject to a subsection C.2. ADU permit, to also be created in multifamily zones not just in single-family zones. Government Code section 66314 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.” Government Code section 66314, subdivision (d)(2) states that ADUs are allowed when, “The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.” Therefore, the Town must amend the Ordinance to allow ADUs in multifamily residential zones.

Additionally, JADUs are created solely pursuant to Government Code section 66323, subdivision (a)(1) and Government Code section 66333 and therefore correspond to Ordinance section 17.52.020 C.1.a. and would not be under subsection C.2. The Town must remove the reference to JADUs in this subsection.

4. Section 17.52.020 D.3 – *JADU Terms* – The Ordinance states, “No ADU or JADU may be rented for a term that is shorter than 30 days. This prohibition applies regardless of when the ADU or JADU was created.” However, Government Code section 66315 states, “Section 66314 establishes the maximum standards that a local agency shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer.” Section 66315 prescribes rental term limits to ADUs but does not include rental term limits for JADUs. Further, Government Code section 66333 outlines the standards and provisions the Town must require in its Ordinance. State ADU Law does not include a rental term limit for JADUs. Therefore, the Town must amend the Ordinance to comply with State ADU Law.
5. Section 17.52.020 D.4 – *Separate Sale* – The Ordinance states, “An ADU or JADU may be rented, but except as otherwise provided in Government Code Section 65852.26, no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling.” However, please note that effective January 1, 2024, Government Code section 66342 provides that, “In addition to the requirement that a local agency allow the separate sale or conveyance of an accessory dwelling unit pursuant to [Section 66341](#), a local agency may also adopt a local ordinance to allow the separate conveyance of the primary dwelling unit and accessory dwelling unit or units as condominiums.”
6. Section 17.52.020 D.5 – *Owner Occupancy* – The Ordinance states that, “Unless applicable law requires otherwise, all ADUs that are permitted on or after January 1, 2025 are subject to an owner-occupancy requirement.” However, Government Code section 66315 states, “Section 66314 establishes the maximum standards that a local agency shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement...” The Town must amend the Ordinance to comply with State ADU Law.
7. Section 17.52.020 D.6, D.7 and D.8 and 17.52.020 E.13– *Miscellaneous Pre-approval Application Requirements* – The Ordinance requires a deed restriction, income reporting, and neighbor noticing requirements as a condition for applying for ADUs. However, Government Code section 66317, subdivision (c) states “No

local ordinance, policy, or regulation, other than an accessory dwelling unit ordinance consistent with this article shall be the basis for the delay or denial of a building permit or a use permit under this section.,” and section 66315

“...establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed...” As deed restrictions, income reporting, and neighbor noticing are not provided in State ADU Law, these requirements in Ordinance may not be the basis for the delay or denial of an ADU application. The Town must amend the Ordinance to comply with State ADU Law.

8. Section 17.52.020 E.1.c – *Maximum Size* – The Ordinance states “Application of other development standards in this subsection E, such as FAR or lot coverage, might further limit the size of the ADU, but no application of the percent-based size limit in subsection E.1.b above or of an FAR, front setback, lot coverage, or open-space requirement may require the ADU to be less than 800 square feet or.” The last sentence is incomplete. The Town must amend the Ordinance to comply with State ADU Law and delete “or”.
9. Section 17.52.020 E.6.a.1 and 2 – *Detached Units* – The Ordinance states, “Except as otherwise provided by subsections E.6.a.1 and E.6.a.2 below, a detached ADU created on a lot with an existing or proposed single-family dwelling unit may not exceed 16 feet in height...” However, the Ordinance, in subsection E.6.a.1. and subsection E.6.a.2., does not provide for the applicable height requirements for multifamily dwellings. Government Code section 66321, subdivision (b)(4) allows for a height of 16, 18, or 20 feet, under certain conditions, for a detached ADUs on a lot with an existing or proposed single-family or multifamily dwelling unit. Therefore, the Town must amend the language to comply with State ADU Law. Additionally, the subsection appears to reference itself instead of referencing the intended exception under E.6.a.3. The Ordinance must be amended for clarity.
10. Section 17.52.020 E.7.b – *Front Setbacks* – The Ordinance states that, “An ADU that is subject to this subsection E must conform to a 25-foot front setback.” However, Government Code section 66321, subdivision (b)(3) prohibits, “[a]ny requirement for a zoning clearance or separate zoning review or 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, **front setbacks**, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” (Emphasis added.) The Town must review changes to State ADU Law and amend the Ordinance accordingly.

11. Section 17.52.020 G.2 and 3 – *Approvals* – The Ordinance states, “The Town must act on an application to create an ADU or JADU within 60 days from the date that the Town deems an application complete.” However, Government Code section 66317, subdivision (a) states, “The 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 from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot.” (Emphasis added.) Additionally, pursuant to subdivision (b), should the Town deny an application, it must provide the applicant in writing a full set of comments with a list of defects or deficiencies, and a description of how to remedy the application. Therefore, the Town must replace the term “must act” to “shall approve or deny” and specify that denial comments are returned to the applicant in “writing” to comply with State ADU Law.

In response to the findings in this letter, and pursuant to Government Code section 66326, subdivision (b)(2), the Town must either amend the Ordinance to comply with State ADU Law or adopt the Ordinance without changes. Should the Town choose to adopt the Ordinance without the changes specified by HCD, the Town must include findings in its resolution that explain the reasons the Town finds that the Ordinance complies with State ADU Law despite the findings made by HCD. Accordingly, the Town’s response should provide a plan and timeline to bring the Ordinance into compliance.

Please note that, pursuant to Government Code section 66326, subdivision (c)(1) if the Town fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD may notify the Town and the California Office of the Attorney General that the Town is in violation of State ADU Law.

HCD appreciates the Town’s efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the Town in fully complying with State ADU Law. Please contact Mike Van Gorder, of our staff, at (916) 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,



Jamie Candelaria
Senior Housing Accountability Unit Manager
Housing Policy Development Division