

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

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November 27, 2023

Jessica Hill, Interim Director of Community and Economic Development
Department of Community and Economic Development
City of Modesto
1010 10th Street, Suite 3300
Modesto, CA 95354

Dear Jessica Hill:

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

Thank you for submitting the City of Modesto (City) accessory dwelling unit (ADU) Ordinance No. 3762-C.S. (Ordinance), adopted April 11, 2023, 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 December 27, 2023.

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

- **Table 4.1-1 – Residential Development Standards** – The Ordinance features a table presenting minimum lot size requirements for residences in different zoning districts. While Government Code section 65852.2, subdivision (a)(1)(B)(i), allows jurisdictions to impose objective standards on ADUs, “[t]hese standards shall not include requirements on minimum lot size.” Therefore, the City must either remove this language or amend the Ordinance to clarify that these minimum size requirements do not apply to ADUs.
- **Table 4.1-1 – Setback Standards** – The Ordinance features a table presenting minimum setback requirements in different zoning districts. Modesto municipal code section 10-4.114, which this table references, requires a minimum of 25 and 15 feet front and street-side setbacks, respectively. However, State ADU Law only recognizes front setbacks, and four-foot side, and rear yard setbacks (Gov. Code, § 65852.2, subds. (a)(1)(D)(vii), (c)(2)(C), (e)(1)(A)(iii),

(e)(1)(D)(i)). A 15-foot “street side” setback is therefore not permissible regarding ADU development. Front setback requirements must not preclude the development of an 800 square-foot ADU with four-foot side and rear yard setbacks (Gov. Code, § 65852.2, subd. (c)(2)(C)). Moreover, front setback requirements may not be imposed for ADUs created pursuant to Government Code section 65852.2, subdivision (e). Therefore, the City must amend its ordinance, and existing municipal code, to comply with State ADU Law.

- Section 10-4.502 (a); Section 10-4.505 (a)(1) – *Junior Accessory Dwelling Units (JADUs) in Non-Single-Family Zones* – The Ordinance allows for JADU development in mixed zones, stating: “The following regulations provided below apply to accessory dwelling units and junior accessory dwelling units in any zone that allows single-family or multi-family, or mixed-use.” However, Government Code section 65852.22, subdivision (a), states that “[a] local agency may, by ordinance, provide for the creation of junior accessory dwelling units in **single-family residential zones**.” (Emphasis added.) Therefore, the City must amend its ordinance to only allow for development of JADUs in single-family residential zones.
- Section 10-4.508 (d) – *JADUs* – The Ordinance outlines requirements for JADUs. However, the Ordinance does not clarify that, per Government Code section 65852.22, subdivision (i)(1), by definition, JADUs may include separate sanitation facilities, or may share sanitation facilities with the existing structure. Therefore, the City should update its ordinance to include this information.
- Section 10-4.505 – *ADU Allowances* – The Ordinance enumerates the number and type of ADUs permitted on different lot types. The Ordinance allows for one JADU and one detached ADU for lots with a single-family dwelling. However, State ADU Law allows for up to one JADU, one ADU within the primary dwelling or an accessory structure, and one new construction detached ADU. 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, indicates 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. Therefore, the City must amend its ordinance to clarify that by-right ADUs can be combined on lots with existing or proposed single-family dwellings.

- Section 10.4.506 (a) – *ADU Maximum Size* – Regarding attached ADUs, the Ordinance states, “If there is an existing primary dwelling on the lot, then the total floor area of an attached accessory dwelling unit shall not exceed fifty (50) percent of the existing primary dwelling.” While this requirement conforms with State ADU Law, Government Code section 65852.2, subdivision (c)(2)(C), prevents jurisdictions from precluding the development of an attached ADU of at least 800 square feet, regardless of size in relation to the primary dwelling. Therefore, the City should amend its ordinance to clarify the correct size maximums for attached ADUs.
- Section 10-4.509 (c) – *ADU Allowances* – The Ordinance states five instances in which parking is not required for ADUs. In addition to the examples listed here, Government Code section 65852.2, subdivision (D)(1)(F), also requires that parking standards not be imposed for ADUs “[w]hen 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 City must amend its ordinance to include this parking requirement exception.
- Section 10-4.510 (b) – *General Development Standards* – The Ordinance requires: “Where a second story accessory dwelling unit is built adjacent a rear or side yard of a lot developed with a one (1) story, single-family residential dwelling, any walls of the accessory dwelling unit that could provide unobstructed views of a neighboring rear yard or actively used side yard shall have either no windows or windows with a bottom sill located at least five (5) feet eight (8) inches from the finished floor of the second story. This does not apply to a window required by the Building Code to be usable for accessible emergency access.” While such a standard is permissible under Government Code section 65852.2, subdivision (a)(1)(B)(i), such standards may not preclude the development of ADUs pursuant to Government Code section 65852.2, subdivision (e). Therefore, the City must remove this language from its ordinance or note this rule’s exceptions.

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 shall notify the City and may notify 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 Nicholas Green, of our staff, at (916) 841-6665 or at Nicholas.Green@hcd.ca.gov.

Sincerely,

A handwritten signature in cursive script that reads "Jamie Candelaria".

Jamie Candelaria
Senior Housing Accountability Manager