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February 6, 2024

Lee Butler, Director of Planning and Community Development
Planning and Community Development Department
City of Santa Cruz
809 Center Street, Room 107
Santa Cruz, CA 95060

Dear Lee Butler:

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

Thank you for submitting the City of Santa Cruz (City) accessory dwelling unit (ADU) Ordinance No. 2022-22. (Ordinance), adopted December 13, 2022, to the California Department of Housing and Community Development (HCD). The Ordinance was received on December 13, 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 March 8, 2024.

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

- Section 24.08.810 – *Procedure* – The Ordinance states: "In the case of construction of an accessory dwelling unit pursuant to Section 24.16.100 et. Seq, this section shall apply only when alternative site configurations are available to an applicant that would permit the construction of a detached accessory dwelling unit up to eight hundred square feet in size without the need for a slope modification permit…" However, Government Code section 65852.2, subdivision (a)(1)(B)(i), requires the City to impose objective standards on ADUs. Objective standards are defined in 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, subdivision (a)(3), requires only a ministerial process for the approval of

ADUs. The slope permit process and the alternative site configurations present a discretionary approval process and subjective standards for compliance in violation of these subdivisions. Therefore, the City must amend the Ordinance to comply with State ADU Law.

- Section 24.16.130 4.a. – *Ministerial Timeline* – The Ordinance states that the state law requirement of a 60-day ministerial review timeline shall not apply when: "Additional administrative or discretionary review is required under applicable provisions of the Santa Cruz Municipal Code or otherwise allowed by state law." However, Government Code section 65852.2, subdivision (a)(3)(A), requires ministerial without discretionary review ADU permit applications to be approved or denied within 60 days. Further, if the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved. Finally, the Ordinance may not impose additional standards on ADUs other than those provided by Government Code section 65852.2, subdivision (a), and no other local ordinance, policy or regulation may be the basis of delay or denial of building or use permits for ADUs (Gov. Code, § 65852.2, subds. (a)(7) & (a)(8)). Therefore, the City must amend its Ordinance to clarify the nature of the 60-day ministerial approval timeline and remove any additional administrative or discretionary review for ADU permit applications.

- Section 24.16.130 4.a. and Section 24.16.140 7. and 11. – *Discretionary Review* – The Ordinance states that: "Applications that propose to locate an accessory dwelling unit on a parcel or portion of a parcel triggering additional administrative or discretionary review shall only be relieved of the requirement for those reviews when no alternative site plan or project proposal can be created which would allow the creation of an up to eight-hundred-square-foot accessory dwelling unit that would not trigger additional reviews" (SCMC section 24.16.130 4.a.i.). The Ordinance indicates that "Higher fencing up to eight feet can be considered in unusual design circumstances, subject to review and approval of the zoning administrator." (SCMC section 24.16.140 7).

  The Ordinance also states that: "All accessory dwelling units shall meet the objective design standards set forth in this code… which may require discretionary review" (SCMC section 24.16.140 11.). However, accessory dwelling units may only be approved: "ministerially **without discretionary review or a hearing**, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits (Gov. Code, § 65852.2, subd. (a)(3)(A)) (emphasis added). As this section references no other ordinance sections regulating variances or special permits, ADUs may not be subject to discretionary review under any circumstances. Therefore, the City must amend its Ordinance to remove the potential for discretionary review of ADU permits.

- Section 24.16.130 8. – *Historic Properties* – The Ordinance states that: "Applications to construct accessory dwelling units on properties that are designated as historic resources by the city, the state of California, or by the National Register of Historic Places shall show substantial compliance with the guidelines of the Secretary of the Interior for development on such properties." However, pursuant to Government Code section 65852.2, subdivision (a)(1)(B)(i), jurisdictions may only impose objective standards the prevent adverse impacts on real proposed listed in the California Register of Historical Resources. As State ADU Law makes no similar carve out for properties on corresponding city-wide and national registries, the City may not preclude the development of ADUs on these properties for failing to show "substantial compliance with the guidelines of the Secretary of the Interior for development." Therefore, the City must amend its Ordinance to accurately reflect which historic properties may be subject to additional objective standards.

- Section 24.16.130 9. – *Citywide Creeks and Wetlands Plan* – The Ordinance states that: "Applications to construct accessory dwelling units on properties that are subject to the Citywide Creeks and Wetlands Plan shall demonstrate compliance with the requirements established in that plan for such properties, as implemented by Section 24.08.2100 et seq." Section 24.08.2100 states: "The Coastal Zone Overlay District is a district which combines with the underlying zone. The City's coastal regulations shall prevail where they conflict with regulations governing the underlying district. Any permitted, administrative or special uses in the underlying zoning district within the Coastal Zone Overlay District are subject to coastal permit regulations and findings, and may be authorized only by approval of a coastal permit, except as provided in Section 24.08.230, Exemptions."

  Further, Section 24.08.230 states that "Minor projects lacking coastal significance, are exempted from the requirements of coastal development permit processing in accordance with the California Coastal Act of 1976 and the California Code of Regulations." While the City may impose separate standards on ADUs in coastal zones pursuant to the California Coastal Act and the local coastal program, it is unclear whether ADUs in the Citywide Creeks and Wetlands Plan are part of the local coastal program, or whether the City merely intends to apply existing standards for the Coastal Zone to the Citywide Creeks and Wetlands. Unless the Citywide Creeks and Wetlands Plan was adopted pursuant to the California Coastal Act, this Ordinance would violate Government Code section 65852.2, subdivision (a)(7) which 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. Additionally, if the Ordinance in section is valid, it is unclear whether any exemption would qualify as "minor projects lacking coastal significance." Please clarify.

Government Code section 65852.2, subdivision (e) 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.” Therefore, standards adopted pursuant to subdivisions (a)-(d) may not preclude ADUs created pursuant to subdivision (e). The City must amend the Ordinance to allow for this exception.

- Section 24.16.140 1.a. – *Number of ADUs per Parcel* – The Ordinance states, for parcels zoned for and including a proposed or existing single-family home, “…One accessory dwelling unit shall be allowed for each parcel. Each parcel may also include a junior accessory dwelling unit...” However, Pursuant to Government Code section 65852.2, subdivision (e)(1), “Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application…to create any of the following: (A) One accessory dwelling unit and one junior accessory dwelling unit (JADU) 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.” Moreover subparagraph (B) permits “One 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 lots with existing or proposed single-family dwellings. Statute does not use ‘or’ nor “one of” to indicate only one or another would be applicable to the exclusion of the other.

  Thus, if the local agency approves an ADU that is created from existing (or proposed) space of a single-family dwelling, or created from an existing accessory structure, and the owner subsequently applies for a detached ADU permit (or vice versa), which meets the size and setback requirements, pursuant to the subdivision, the local agency cannot deny the applicant, nor deny a permit for a ADU under this section. This permits a homeowner, who meets specified requirements, to create one (1) converted ADU, one (1) detached, new construction ADU, and one (1) JADU, in any order without prejudice, totaling three units. This standard simultaneously applies to ADUs created pursuant to Government Code section 65852.2, subdivision (e)(1)(C) and (D), on lots with proposed or existing multifamily dwellings according to specified requirements. Therefore, the City must amend its Ordinance to allow for the correct allotment of ADUs.

- Section 24.16.140 1.b. – *Multifamily Detached ADUs* – The Ordinance states, “For parcels developed with and existing with an existing multifamily structure(s): Two new construction and at least 1 conversion accessory dwelling unit” on each parcel. However, Government Code section 65852.2, subdivision (e)(1)(D) specifies, that the “two new construction” ADUs are “located on a lot that has an existing or proposed multifamily dwelling, but are

detached from that multifamily dwelling and are subject to a height limitation in clause (i), (ii), or (iii), as applicable, of subparagraph (D) of paragraph (2) of subdivision (c), and rear yard and side setbacks of no more than four feet." Therefore, the City must amend the Ordinance to allow for ADUs with proposed multifamily dwellings and expand on the requirements of new construction ADUs in compliance with State ADU Law.

- Section 24.16.140 3. – *Unit Size, Lot Coverage & Floor Area* – The Ordinance states: "The floor area for new construction detached accessory dwelling units shall not exceed ten percent of the net lot area…" and "…shall not exceed fifty percent of the existing habitable floor area of the principal residential use of the property". The City appears to be limiting the size of ADUs based on lot coverage requirements and floor area ratio. However, local agencies may not establish any maximum size for an ADU based upon 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 (Gov. Code, § 65852.2, subd. (c)(2)(C)). Therefore, the City must amend its Ordinance to align with statute.

- Section 24.16.140 8.b. and 8.f.i. – *Occupancy* – The Ordinance states, "For accessory dwelling units permitted on or before December 31, 2019, or on or after January 1, 2025, the property owner or an adult member of the property owner's immediate family, limited to the property owner's spouse, adult children, parents, or siblings, and subject to verification by the city, must occupy either the primary or accessory dwelling as his or her principal place of residence…" However, effective January 1, 2024, Government Code section 65852.2, subdivision (a)(8), prohibits the City from imposing an owner-occupant requirement. Therefore, the City must amend the Ordinance to comply with State ADU Law.

- Section 24.16.140 9. – *Connections Between Units* – The Ordinance states: "At the discretion of the planning director, accessory dwelling units may be permitted to create direct access between units, or common access to a shared garage, laundry room, or storage area." However, jurisdictions may only impose objective standards on ADUs, which, by definition, involve no personal or subjective judgment by a public official (Gov. Code, § 65852.2, subd. (a)(1)(B)(i) & (j)(7)). A standard that depends on "the discretion of the planning director" involves subjective judgement by a public official and is thus not an objective standard. Therefore, the City must amend its Ordinance to remove this language.

- Section 24.16.141 1.c. and 2. – *Setbacks* – The Ordinance states: "A smaller front setback shall be granted only if needed to accommodate an accessory dwelling unit of up to 800 square feet." SCMC section 24.16.141 2. expands

on this allotment. However, while jurisdictions can impose front setbacks, they cannot preclude an ADU of 800 square feet or fewer from existing in the front setback, regardless of whether such an ADU could exist somewhere else on the lot. There exists no legislative provision of feasibility or conditionality regarding the preclusion of front setbacks on ADUs in statute. To read such a provision into subparagraph (C) would imply each of the preclusions listed apply a discretionary test of feasibility or additional conditions when applied. Therefore, the City must further amend its Ordinance to allow for ADUs built pursuant to Government Code section 65852.2, subdivision (c)(2)(C) within the front setback regardless of feasibility within the front setback.

- Section 24.16.141 4.b. – *Second Story Floor Area* – The Ordinance states: "The floor area for all second stories shall not exceed fifty percent of the first-floor area for all structures, except in cases where the first-floor area of the structure to which a second story is being added constitutes thirty percent or less of the net lot area." However, this requirement may preclude the development of accessory dwelling units pursuant to Government Code section 65852.2, subdivision (e). Therefore, the City must amend its Ordinance to clarify the exceptions to these design standards.

- Section 24.16.150 1. – *Separate Sale* – The Ordinance states: "The accessory dwelling unit or junior accessory dwelling unit shall not be sold separately." However, Government Code section 65852.26 and Government Code section 65852.2, subdivision (a)(10) provide for the separate sale of ADUs from the primary dwelling unit when certain conditions are met. The City must amend the Ordinance to comply with State ADU Law.

- Section 24.16.170 3. – *Attached Junior Accessory Dwelling Units (JADUs)* – The Ordinance states that: "Junior accessory dwelling units must be attached to a single-family dwelling…" Government Code section 65852.22, subdivision (a)(4) states, that a JADU must (emphasis added): "…be constructed within the walls of the proposed or existing single-family residence. For 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." JADUs may not be created by a new construction addition to the single-family residence. Therefore, the City must clarify that JADUs are only created within the walls of a proposed or existing single-family residence which includes enclosed uses such as attached garages.

- Section 24.16.170 7. – *JADU Entrance* – The Ordinance states: "Junior accessory dwelling units that do not contain all the required features of a dwelling unit will be required to maintain an interior connection between the junior accessory dwelling unit and the primary dwelling unit." However, Government Code section 65852.22, subdivision (a)(5)(B) states, that: "If 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." Requiring a separate entrance for JADUs for any reason beyond the lack of a separate bathroom within the JADU would violate this subdivision. Therefore, the City must amend its Ordinance to require separate entrances for JADUs under this circumstance and not due to JADUs lacking "all the required features of a dwelling unit."

- Section 24.16.170 8. – *Deed Restriction* – The Ordinance states that: "A deed restriction pursuant to Section 24.16.150 shall be required and recorded on the parcel." However, Section 24.16.150 of the SCMC contains deed restriction provisions that go beyond what is provided by Government Code section 65852.22 (a)(3), such as SCMC sections 24.16.150 6. and 7. Therefore, the City must amend its Ordinance to only permit deed restrictions for JADUs pursuant to the terms specified in Government Code section 65852.22, subdivision (a)(3).

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 Nicholas Green, of our staff, at (916) 841-6665 or at Nicholas.Green@hcd.ca.gov.

Sincerely,

Jamie Candelaria

Jamie Candelaria
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Housing Policy Development Division