

**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](http://www.hcd.ca.gov)



May 23, 2023

Erika Vandenbrande, Director  
Community Development  
City of Walnut Creek  
1666 North Main Street  
Walnut Creek, CA 94596

Dear Erika Vandenbrande:

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

Thank you for submitting the City of Walnut Creek (City) accessory dwelling unit (ADU) Ordinance No. 2210 (Ordinance), adopted September 21, 2021, 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 June 23, 2023.

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

- Sec. 10-2.1.303 (A) – *“Existing” Definition* – The Ordinance defines “existing” as being “legally constructed.” However, defining whether a structure is “existing” based on its legal status may create conflict, particularly considering certain older existing structures that may have been originally built without the City’s oversight. Government Code section 65852.23, subdivision (a), states, “Notwithstanding any other law, and except as otherwise provided in subdivision (b), a local agency shall not deny a permit for an unpermitted accessory dwelling unit that was constructed before January 1, 2018, due to either... (1) The accessory dwelling unit is in violation of building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code; [or] (2) The accessory dwelling unit does not comply with Section 65852.2 or any local ordinance regulating accessory dwelling units.” As this section of state statute prohibits denial of an ADU permit for older units even if the unit violates the whole of ADU statute, state statute acknowledges that there are existing structures that must be

permitted as an ADU, even though they may have not been legally constructed. Therefore, the City should remove the phrase “legally constructed” from its definition.

- Sec. 10-2.3.502 (A) and (B); 10-2.3.503 (A) – *Unit Allowance* – The Ordinance states that “one (1) accessory dwelling unit is permitted on lots containing a single-family dwelling....” It later states that multifamily buildings may have converted units or detached units, “but not both.” However, Government Code section 65852.2, subdivision (e)(1), states, “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 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, subpart (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. 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 JADU under this section. This permits, on a single-family lot that meets specified requirements, one converted ADU, one detached, new construction ADU, and one JADU, in any order without prejudice, totaling three units. Please be further advised that this standard also 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. The City must amend the Ordinance to comply with State ADU Law.

- Sec. 10-2.3.502 (A)(3) and (B)(1); Sec. 10-2.3.503 (B)(3) – *Height* – The Ordinance sets the maximum height of many categories of ADUs to 16 feet. However, current Government Code section 65852.2, subdivision (c)(2)(D), allows height maximums of 16, 18, or 25 feet, depending on the applicable provisions. The City must review recent changes to ADU statute and amend the Ordinance accordingly.

- Sec. 10-2.3.503 (J) – *Separate Sale* – The Ordinance prohibits separate sale. However, Government Code section 65852.26 creates a narrow exception to allow separate conveyance of an ADU to a qualified buyer if the property was built or developed by a qualified non-profit corporation, among other things. The City must revise the Ordinance to allow for such an exception.

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 contact Mike VanGorder, of our staff, at (916) 776-7541 or at [mike.vangorder@hcd.ca.gov](mailto:mike.vangorder@hcd.ca.gov) if you have any questions or would like HCD's technical assistance in these matters.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a stylized flourish extending to the right.

David Zisser  
Assistant Deputy Director  
Local Government Relations and Accountability