

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

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March 23, 2023

Juliana Lucchesi, Planning Director
Department of Planning
City of Yreka
701 Fourth Street
Yreka, CA 96097

Dear Juliana Lucchesi:

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

Thank you for submitting the City of Yreka (City) accessory dwelling unit (ADU) Ordinance No. 854 (Ordinance), adopted August 26, 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 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 April 22, 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 16.12.045 – *Definition of Accessory Dwelling Unit*** – The Ordinance defines an ADU, in relevant part, as “an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons” that has “a separate exterior entrance and include[s] permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated.” The Ordinance adds that an ADU also includes a “manufactured home, as defined in Section 18007 of the Health and Safety Code.” This definition does not include an efficiency unit, though Government Code section 65852.2, subdivision (j)(1), defines an ADU to include an efficiency unit. The definition of an ADU must be updated to include this variation.
- **Section 16.12.045 – *Definition of Junior Accessory Dwelling Unit*** – In the Ordinance’s definition of a junior accessory dwelling unit (JADU), it states: “A JADU may include separate sanitation facilities or may share sanitation

facilities with the existing structure.” However, the definition does not include a requirement that a JADU include an interior entry to the main living area if the JADU does not have a separate bathroom, as required by Government Code section 65852.22, subdivision (a)(5)(B). The definition of a JADU must be updated to include this requirement.

- Section 16.46.170 – *“Increased Floor Area”* – The Ordinance makes several references to “increased floor area” due to ADU development, such as on line 249: “The increased floor area of an attached ADU shall not exceed fifty percent of the proposed or existing primary dwelling living area....” (Emphasis added.) While the language in the rest of the sentence complies with state law, the phrase “increased floor area” uses imprecise language to characterize ADU development and may create confusion over what is allowed. Further, pursuant to Government Code section 65852.2, subdivision (a)(1)(D)(iv), the 50 percent limitation applies only to existing primary dwellings, not proposed primary dwellings. Therefore, the City should change “increased floor area” to “size” and must limit this requirement to existing primary dwellings.
- Section 16.46.170 – *Incorrect JADU spelling* – The Ordinance erroneously spells JADUs “JAUDs” in line 279. Therefore, the City should correct this minor mistake.
- Section 16.46.170 – *Ownership Requirements* – The Ordinance prohibits separate sale of an ADU or JADU from its respective primary dwelling. However, as of January 1, 2022, Government Code section 65852.26, subdivision (a)(1), creates a narrow exception to allow separate conveyance of ADUs with the involvement of qualified nonprofit housing organizations. The Ordinance must provide for such an exception.
- Section 16.46.170 – *Use Permit* – The Ordinance provides: “In the CPO, C-2, CH, CT, and M-1 zones, ADUs and JADUs are permitted by-right only if the property has an existing or proposed single- or multi-family dwelling with an approved use permit.” Government Code section 65852.2, subdivision (a)(3)(A), provides that, among other things, applications for ADUs and JADUs shall be considered and approved ministerially notwithstanding Government Code sections 65901 and 65906, or any local ordinance regulating the issuance of variances or special use permits. Further, Government Code section 65852.2, subdivisions (d)(2) and (e)(2), provide that applications for ADUs and JADUs shall not be denied due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the ADU, nor shall a local agency require as a condition for ministerial approval the correction of nonconforming zoning conditions. The City must remove “with an approved use permit” to be consistent with these statutory provisions.

- Section 16.46.170.G. – *JADU* – The Ordinance provides that JADUs shall be attached to and within the living area of the proposed or existing dwelling. Government Code section 65852.22, subdivision (a)(4), provides that JADUs shall be constructed within the walls of the proposed or existing single-family residence, *including attached garages*. The Ordinance must be amended to reflect this requirement.
- Section 16.46.170.H. & M. – *Fire Protection* – The Ordinance provides that fire protection mechanisms, as determined by the Fire Marshal, may be required for fire and life safety for ADUs and JADUs not meeting setbacks. The Ordinance does not specify exactly what setbacks are referenced. Further, fire protection mechanisms are not a requirement for ADUs under State ADU Law, except fire sprinklers in limited circumstances as prescribed in Government Code section 65852.2, subdivisions (a)(1)(D)(xii) and (e)(3). Government Code section 65852.22, subdivision (e), allows a local agency to impose fire and life protection requirements on single-family residences containing JADUs provided the requirements apply uniformly within the zone regardless of whether the single-family residence includes a JADU. The Ordinance must be amended to reflect these requirements under State ADU Law.
- Section 16.46.170.N. – *Plumbing Fixtures* – The Ordinance provides that new or separate utility connections for specified ADUs shall be subject to a connection fee or capacity charge proportionate to the burden on the sewer system that the proposed ADUs or JADUs will have based on either their size or number of plumbing fixtures. However, Government Code section 65852.2, subdivision (h)(5), requires the connection fee or capacity charge to be based on either square feet or number of drainage fixture unit valves. The Ordinance must be amended to reflect these requirements.
- Section 16.46.170.N. – *Number of ADUs Allowed* – The Ordinance provides a maximum of one ADU and one JADU are allowed per lot occupied by a single-family residential unit subject to applicable requirements. The categories of ADUs under Government Code section 65852.2, subdivisions (e)(1)(A) and (e)(1)(B), may be combined and single-family residences are allowed three ADUs: two conversions under subdivision (e)(1)(A), and another detached 800 square-foot ADU under subdivision (e)(1)(B). The Ordinance should be amended to be consistent with these provisions.¹

¹ Section 16.46.170.Q.e. incorporates by reference requirements under sections 17.76.130 and 17.08.145. The Department has not reviewed these requirements and the requirements set forth therein shall be consistent with the changes required by the Department set forth in this correspondence.

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

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