

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

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December 14, 2021

Lisa Costa Sanders, Town Planner
Planning Department
Town of Atherton
150 Watkins Avenue
Atherton, CA 94027

Dear Lisa Costa Sanders:

RE: Review of the Town of Atherton Accessory Dwelling Unit (ADU) Ordinance

Thank you for submitting the Town of Atherton's (Town) ADU Ordinance Number 646, adopted October 21, 2020. The ordinance was received by the California Department of Housing and Community Development (HCD) on May 28, 2021. HCD is submitting 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 several respects, noted below. HCD requests that the Town provide a written response to these findings no later than January 13, 2022. HCD will review and consider any written response received from the Town before that date in advance of taking further action authorized by Government Code section 65852.2, subdivision (h).

Although the ADU ordinance meets some statutory requirements, it must be revised to comply with State ADU Law as follows:

- *Allowed areas for the creation of ADUs:* Municipal Code section 17.52.020, *Zones Allowed*, notes that ADUs may be allowed in all areas zoned to allow single-family residential uses but is silent as to multifamily uses. As such, the code appears to constrain the development of ADUs on sites with a proposed or existing multifamily dwelling structure. State ADU Law allows ADUs to be created on sites that are zoned to allow single-family or multifamily dwelling residential use where a proposed or existing dwelling exists, regardless of whether it is a single-family or multifamily dwelling. (Gov. Code, § 65852.2, subd. (a)(1)(D)(ii).) Thus, the local ordinance is impermissibly narrow as to the location of ADUs and should be revised to expand the areas allowing the creation of ADUs.
- *Municipal Code section 17.52.040, Development Standards and General Requirement:* Section 17.52.040.C.3.b refers to Chapter 17.40 *Accessory Buildings and Structures* and provides that ADUs are subject to the setback and development

standards in that chapter. Although HCD has not comprehensively evaluated the Town's zoning code, it observes that Chapter 17.40 contains multiple constraints that cannot be imposed on ADUs under State ADU Law.

A local agency may impose development standards, such as setbacks, for the creation of ADUs. Setbacks may include front, corner, street, and alley setbacks. However, setbacks must not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant to Government Code section 65852.2, subdivision (e). Further, required setbacks may be no more than four feet from the side and rear lot lines for an attached or detached ADU. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).) The Town's setbacks set out in section 17.40.040 exceed these provisions.

Other problematic restrictions relate to height, location, floor area ratio calculation, habitation, and window and skylight height limitations. These requirements appear to exceed the standards of State ADU Law and may be excessive and burdensome to the reasonable creation of ADUs. The Town should review and revise its code for compliance with State ADU Law to assure that local standards do not exceed state standards. As such, reference to Chapter 17.40 should be removed from the ADU ordinance. (Gov. Code, § 65852.150, subd. (b).) Standards applicable to ADUs should be clearly stated in Chapter 17.52 to avoid confusion.

- *Municipal Code section 17.52.040.A, Maximum Number:* Although the ordinance limits ADUs to sites zoned for single-family residential use, ADUs are permitted to be created on sites zoned to allow both single-family and multifamily residential use. (Gov. Code, § 65852.2, subd. (a)(1)(D)(ii).) In addition, multiple ADUs may be created on a site, with an existing multiple family dwelling structure (Gov. Code, § 65852.2, subds. (e)(1)(C) and (e)(1)(D).) Junior Accessory Dwelling Units (JADUs) are limited to one per single-family lot on sites zoned to allow single-family dwelling use and may be created with an ADU on the same site. (Gov. Code, §§ 65852.2, subds. (e)(1)(A), (e)(1)(B), and 65852.22, subd. (a).) The ordinance should be revised to permit ADUs on all sites that permit single-family or multifamily use and shall allow multiple ADUs on sites with an existing multifamily dwelling structure, which does include a duplex.
- *Municipal Code section 17.52.040.B, Location:* This section places impermissible limits on the location of ADUs. It provides: "The ADU shall be [1] attached to the existing main residence or [2] located within the habitable area of the existing main residence or [3] detached from the main residence and located on the same lot as the main residence." (Bracketed material added.) Statute allows ADUs to be created with an existing or proposed primary dwelling, which may be either a single-family or multifamily dwelling structure. In addition, an ADU may be created from any area within an existing structure and is not limited to being created from habitable space. (Gov. Code, § 65852.2, subds. (a)(1)(D)(ii), (a)(1)(D) (iii), and

(e)(1)(A.) The ordinance should be revised to reflect locations allowed by State ADU Law.

- *Municipal Code section 17.52.040.C.2, Height:* Under State ADU Law, a local agency may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).) Although the Town's ordinance does not limit the height of an ADU below 16 feet, it does limit the height of a sidewall to be not greater than 11 feet. The Town's sidewall height requirement is more restrictive than the standards contained in State ADU Law and must be revised to not constrain design options that are 16 feet or less in height. (Gov. Code, § 65852.2, subd. (a)(6).)
- *Municipal Code section 17.52.040.C.3.ii,¹ Setbacks:* The ordinance establishes the same standards for detached ADU setbacks as those for Accessory Buildings and Structures in Chapter 17.40. These standards may exceed standards for ADU setbacks. (Gov. Code, § 65852.2, subds. (a)(1)(D)(vii), (c)(2)(C), and (e)(1).) The ordinance should be revised to remove the standards of this Chapter.
- *Municipal Code section 17.52.040.5.ii,² Exemption from Maximum Floor Area Limitations:* The section refers to Chapter 17.40 for side and rear lot line setbacks. As noted elsewhere, the setbacks noted in this Chapter greatly exceed the allowed setbacks of State ADU Law. In addition, local agencies shall not limit the maximum size of an ADU to be less than 850 square feet for a studio or one-bedroom and not less than 1,000 square feet for an ADU exceeding one bedroom. The creation of an ADU, constrained by lot size, lot coverage, floor area ratio or open space requirements, shall be allowed to be at least 800 square feet. As previously noted, Chapter 17.40 contains standards well in excess of that permitted by state law and cannot be applied to ADUs. The ordinance should be revised to remove the reference. (Gov. Code, § 65852.2, subd. (a) and (c)(2)(C).)
- *Compliance with Applicable Requirements:* Municipal Code section 17.52.040.K. notes that ADUs and JADUs shall meet all applicable zoning and fire regulations and shall comply with local building codes. The inclusion of this language is confusing and overbroad. Although ADU statute requires ADUs and JADUs to comply with local building codes, local development standards shall not exceed state standards. (Gov. Code, § 65852.2, subd. (a)(6).) The ordinance (Chapter 17.52) must be revised to identify the specific, applicable codes and standards that apply to ADUs, consistent with state law.

In these respects, revisions are necessary to comply with statute.

¹ This section is codified as Municipal Code section 17.52.040.C.3.b.

² This section is codified as Municipal Code section 17.52.040.C.5.b.

HCD will consider any written response to these findings, such as a revised ordinance or a detailed plan to bring the ordinance into compliance with law by a date certain, before taking further action authorized pursuant to Government Code section 65852.2. Please note that HCD may notify the Attorney General's Office in the event that the City fails to take appropriate and timely action under section 65852.2, subdivision (h).

HCD appreciates the Town's efforts in the preparation and adoption of an ADU ordinance and welcomes the opportunity to assist the Town in fully complying with State ADU Law. Please feel free to contact Greg Nickless, of our staff, at 916-274-6244 or at greg.nickless@hcd.ca.gov.

Sincerely,

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

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability