

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

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April 10, 2023

Pierce MacDonald, Senior Planner
Planning & Building Department
City of Piedmont
120 Vista Ave
Piedmont, CA 94611

Dear Pierce MacDonald:

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

Thank you for submitting the City of Piedmont's (City) accessory dwelling unit (ADU) Ordinance No. 768 (Ordinance), adopted December 5, 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 May 10, 2023.

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

- **17.38.020 – Efficiency Kitchen** – The definition for junior accessory dwelling unit (JADU) states “[a JADU] shall include an efficiency kitchen that provides for a cooking facility with appliances, including a permanently installed cooktop, a preparation sink, and space for a refrigerator....” However, Government Code section 65852.22, subdivision (a)(6)(A), requires only “a cooking facility with appliances” and does not mention a “permanently installed cooktop” or “space for a refrigerator.” Therefore, the City must remove these references.
- **17.38.060 (D)(2) – Unit Allowance** – The Ordinance states “[the] new construction detached accessory dwelling unit in this subsection may be combined with a junior accessory dwelling unit as described above.” This appears to only allow the combination of one JADU and one detached ADU to be built subject to Government Code section 65852.2, subdivision (e)(1)(B). This omits several permitted combinations.

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 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.

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 a homeowner, who meets specified requirements, to create one converted ADU; one detached, new construction ADU; and one JADU, in any order, totaling three units. 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. Therefore, the City must clarify the section to note these permitted combinations.

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 contact Mike Van Gorder, of our staff, at (916) 916-776-7541 or at 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 long horizontal stroke extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability