

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

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December 15, 2022

Francisco Gomez
Housing & Community Development Manager
City of Union City
34009 Alvarado-Niles Road
Union City, CA 94587

Dear Francisco Gomez:

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

Thank you for submitting the City of Union City's accessory dwelling unit (ADU) Ordinance No. 900-22 (Ordinance), adopted September 27, 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 sections 65852.2 and 65852.22 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 January 13, 2022.

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

- Section 18.34.020(B)(1) – *Junior Accessory Dwelling Unit Definition* – In the definition for JADU, the Ordinance notes, "Within areas zoned to allow single-family or multifamily residential uses that contain..." However, JADUs are defined as being only permitted in areas zoned for Single Family Residences (Gov. Code, § 65852.22(a)(1)). Therefore, the City must remove the reference to multifamily zones in this definition.
- Section 18.34.030(A)(2)(d) and (A)(2)(e) – *Building Separation* – The Ordinance states Detached ADUs "shall maintain a minimum five (5) foot separation from other structures on the lot." However, Government Code section 65852.2, subdivision (e)(1)(B), provides for one detached, new construction, ADU that does not exceed four-foot side and rear yard setbacks. Government Code section 65852.2, subdivision (e)(1), allows for a minimum of at least 800 square feet with four-foot side and rear yard setbacks. Imposing a required separation between structures may impede the creation of an ADU of

at least 800 square feet. Therefore, the City should add language to clarify that the minimum separation is not required where it would render infeasible the creation of an ADU of 800 square feet or less.

- Section 18.34.030(A)(2)(f) – *Corner Lot Setbacks* – The Ordinance states “Additional setbacks may be required for attached or detached ADUs over 800 square feet in area when the unit is located on a corner lot or a through lot.” However, Government Code section 65852.2, subdivision (a)(1)(D)(vii), states: “a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.” HCD considers side lot line setbacks, established in statute, as applying to the street sides of a corner lot. Therefore, the City should remove this section or clarify that the provision applies to front setbacks only.
- Section 18.34.030(A)(3)(c) – *Calculation of Floor Area* – The Ordinance states “Enclosed patios or other enclosed non-conditioned space (as defined by the California Building Code) directly accessible from or solely attached to an ADU shall be included in the square footage of the unit.” HCD requests clarification on this provision, as it might be impermissibly restrictive. Please provide a clarification as to (1) the part of the California Building Code you are referencing, and (2) the meaning of “directly accessible” in this context.
- Section 18.34.030(A)(4) – *Height* – The Ordinance states “Attached ADUs shall be subject to the height limitations established by the zoning district in which the ADU is located.” However, this requirement may conflict with the 16-foot height minimum that ADU law requires (Gov. Code, § 65852.2, subd. (a)(1)(B)(i)). Please also take notice that as of January 1, 2023, State ADU Law (SB 897, Chapter 664, Statutes of 2022) height minimums are changed. Please refer to updated statute when amending this section to comply with State ADU Law.
- Section 18.34.030(A)(6) – *Separate Sale* – The Ordinance states “...ADUs may not be sold separately from the primary residence but may be rented separately. ADUs may not be used for short-term rentals (less than thirty (30) days).” The Ordinance currently prohibits the separate sale of an ADU. However, 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 City must modify its code to allow for such an exception.
- Section 18.34.030(A)(12)(a), (A)(12)(b) and (A)(12)(c) – *Discretionary Design Standards* – The Ordinance states in (a)(i)(E) that “Exceptions may be granted by the Director where the Director finds that adequate design features have

been incorporated to *create visual variety and avoid a bulky or monolithic appearance.*” Subdivision (a)(iii)(C) states “Exceptions may be granted by the Director to accommodate a complete architectural style or alternative detailing that *complement the architectural character of the existing structure.*” Subdivision (b)(i)(B) adds “Exceptions may be granted by the Director to accommodate alternative window designs *complementary to the architectural style* of the structure. Subdivision (b)(ii) states that upper story windows “shall be located to *maximize privacy* for adjacent properties.” Lastly, subdivision (c)(vi) states, “Exceptions may be granted by the Director to the requirements listed above to *accommodate a complete architectural style* or alternative roof forms and detailing that *complements the architectural character* of the existing development.”

However, statute requires that no discretionary subjectivity is applied in design standards. Per Government Code section 65852.2, subdivision (a)(4), “a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units.” Terms such as “complimentary to the architectural style,” “create visual variety,” “accommodate a complete architectural style,” and “maximize privacy” are potentially subjective requirements. Be advised that the enactment of Senate Bill (SB) 897 (Chapter 664, Statutes of 2022) changes State ADU Law which, effective January 1, 2023, requires that local agencies use objective standards in their ministerial approval of an ADU. The City should clarify its process of exceptions to provide that any exceptions made to objective design guidelines must per se also be objective, non-discretionary and ministerially reviewed within the same timeframe.

- Section 18.34.030(A)(12)(g) – *Historic Properties* – The Ordinance states “For properties located within the Landmark and Historic Preservation Overlay Zone, or included in the California Register of Historical Resources, the National Register of Historic Places, or considered a historic resource after completion of a historic resource evaluation, any new addition for an attached ADU shall be located along the rear wall of an existing single family dwelling, unless the ADU is fully enclosed within the existing building walls.” This is overly broad. Government Code section 65852.2, subdivision (a)(1)(B)(i), states that local jurisdictions may, “Impose standards on accessory dwelling units that... prevent adverse impacts on any real property that is listed in the California Register of Historic Resources.” Statute does not acknowledge local registers or historic designations; therefore, the City must remove the references to any other historic district, register, or overlay zone.
- Section 18.34.030(A)(13) – *Exemptions* – The Ordinance states “A project *may* be exempted from one (1) or more of the established standards *if it is determined* that the specific standard(s) would make it *infeasible* for an eight

hundred (800) square foot ADU to be constructed on a lot consistent with Government Code, Section 65852.2, subdivision (e).” However, Government Code, Section 65852.2, subdivision (e) states that “Notwithstanding subdivisions (a) to (d), inclusive, a local agency *shall* ministerially approve an application for a building permit...” for ADUs under subdivision (e). (Emphasis added). Hence, design standards adopted pursuant to subdivision (a) cannot be applied to ADUs created under the authority of subdivision (e). Therefore, the City must amend this section to clarify that local development standards do not apply to ADUs constructed under subdivision (e).

- Section 18.34.030(C) – *JADUs Permitted* – The Ordinance states JADUs shall be permitted “On lots with an existing or proposed single-family dwelling...” However, State law limits JADUs, “...to one per residential lot *zoned for single-family residences* with a single-family residence built, or proposed to be built, on the lot (Gov. Code §65852.22 subd. (a)(1)). (Emphasis added). Therefore, the City must revise the ordinance to clarify that JADUs be permitted only in lots zoned for single family dwellings.

In response to the findings in this letter, and pursuant to Government Code § 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 Michael McLaughlin, ADU Policy Specialist, at (916) 776-7773 or at Michael.McLaughlin@hcd.ca.gov.

Sincerely,



Shannan West
Housing Accountability Unit Chief