

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

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June 30, 2023

Rob Eastwood, Community Development Director  
Planning Department  
City of Campbell  
70 N. First St  
Campbell, CA 95008

Dear Rob Eastwood:

**RE: Review of Campbell's ADU Ordinance under State ADU Law (Gov. Code, § 65852.2)**

Thank you for submitting the City of Campbell's (City) accessory dwelling unit (ADU) Ordinances Nos. 2291 and 2286<sup>1</sup>, adopted February 3, 2023, and August 16, 2022, to the California Department of Housing and Community Development (HCD). HCD has reviewed both ordinances and submits these written findings pursuant to Government Code section 65852.2, subdivision (h). 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 July 28, 2023.

Ordinance 2291 (Ordinance) addresses many statutory requirements; however, HCD finds that the Ordinance does not comply with State ADU Law in the following respects:

- 21.23.010 – CC&Rs – The Ordinance states "It is not the intent of this Chapter to override any lawful use restrictions as may be set forth in Conditions, Covenants and Restrictions (CC&Rs)." However, California Civil Code section 4751, subdivision (a), states "Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code, is void

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<sup>1</sup> Ordinance 2286 only sparingly touches on ADU issues and largely focuses on Senate Bill (SB) 9 (Chapter 162, Statutes of 2021) (Gov. Code, §§ 65852.21 and 66411.7). While it is beyond the scope of this letter to outline conflicts between this ordinance and SB 9, as a courtesy, HCD advises that the definition of "Proposed Housing Element" on pages 4-5 may conflict with Government Code sections 65852.21 and 66411.7.

and unenforceable.” Therefore, the City must add language to reflect this exception.

- 21.23.020 – *Unit Allowance* – The Ordinance permits “One accessory dwelling unit and one junior accessory dwelling unit may be constructed on parcels satisfying all of the following minimum standards...” 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 subdivision (e)(1)(B) permits “One 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 junior accessory dwelling unit (JADU) under this section. This permits a homeowner, who meets specified requirements, to create one (1) converted ADU, one (1) detached, new construction ADU, and one (1) JADU, in any order without prejudice, 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 existing and/or proposed multifamily dwellings according to specified requirements. Therefore, the City must amend the language to comply with statute.

- 21.23.020 (B) – *Legal Status* – The Ordinance allows ADUs on “A parcel that is presently developed with at least one *lawfully* constructed primary dwelling unit...”. However, the legal status of the primary dwelling is not determinative of the approval or denial of an ADU. Government Code section 65852.2, subdivision (a)(2) requires “The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an **existing** single-family or multifamily dwelling on the lot.” Further, Government Code section 65852.2, subdivision (d)(2) states, “The local agency shall not deny an application for a permit to create an accessory dwelling unit 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 accessory dwelling unit.” Therefore, the City must change the phrase “lawfully constructed” to “existing”.

- 21.23.030, 21.23.030 (I)(3), 21.23.050, 21.23.065 – *Limited Exemption Unit Definition* – The Ordinance makes several references, from Development Standards, “except as provided by Section 21.23.065 (Special Provisions for Statewide Exemption Accessory Dwelling Units)”. These units are defined in Section 21.23.065 (B) as “an attached or detached accessory dwelling unit no larger than 800 square feet in area.” However, this definition describes only units subject to Government Code section 65852.2, subdivision (e)(1)(B), rendering converted units subject to subdivisions (e)(1)(A) and (e)(1)(C) and some detached units per subdivision (e)(1)(D) subject to local design standards. The Ordinance specifically locates “interior” (converted) ADUs, exclusively created within existing single-family homes, to section 21.23.030 (I)(3), outside of the “special provisions for statewide exemption” and thereby allowing local development standards to apply. Note that Government Code section 65852.2, subdivision (e)(1)(A), allows for such units to be created with both “proposed or existing” single family residences. Similarly, the Ordinance locates “Special Provisions for Multi-Family Residential Properties” in 21.23.050, outside of the statewide exemption section and thereby allowing local development standards.

Government Code section 65852.2, subdivision (e)(1), exempts all subject units from local design standards; the omission of categories of units from “Special Provisions for Statewide Exemption ADUs” violates State ADU Law. Therefore, the City must add language addressing units subject to subdivisions (e)(1)(A), (e)(1)(C) and (e)(1)(D) in 21.23.065 to comply with State ADU Law.

- 21.23.030 (B), Table 3-1 – *Unit Siting* – The Ordinance states “Detached accessory dwelling units may be located in front of, to the side of, or behind the primary dwelling unit.” This omits “attached” ADUs and in so doing potentially conflicts with Government Code section 65852.2, subdivisions (c)(2)(C) and (e). The Ordinance also fails to acknowledge that ADUs may be created within the primary dwelling unit or accessory structure. The City should amend the Ordinance to comply with statute.
- 21.23.030 (C) – *Open Space* – The Ordinance references “the required open space...specified by the applicable zoning district and/or area or neighborhood plan.” None of these terms are defined, creating the possibility of a conflict with Government Code section 65852.2, subdivision (c)(2)(C), which prohibits “requirement for... open space... that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks....” Furthermore, such an open space requirement may not preclude a unit subject

to Government Code section 65852.2, subdivision (e). The City must note the exceptions.

- 21.23.030 (D) – *Floor Area Ratio* – The Ordinance states, “Creation of an accessory dwelling unit shall comply with the maximum floor area ratio and maximum lot coverage as specified by the applicable zoning district and/or area neighborhood plan.” However, Government Code section 65852.2, subdivision (c)(2)(C), prohibits a local agency from imposing a “requirement for a zoning clearance or separate zoning review or **any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling**, or limits on **lot coverage, floor area ratio**, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” (Emphasis added.) If the primary dwelling is less than 1,600 square feet, the Ordinance, as it is currently written, would require an ADU to be less than 800 square feet. The City must revise the Ordinance to eliminate this potential constraint on the size of an ADU addition and clarify that neither floor area ratio nor lot coverage would deny a minimum of 800 square foot ADU.
- 21.23.030 (E), 21.23.100 (E) – *Setbacks* – The Ordinance requires, for detached ADUs, front setbacks of “the same standard as for the primary dwelling unit” and a “street side” setback of twelve feet; for attached or interior ADUs, the Ordinance requires “the same standard as for the primary dwelling unit”. It later states “An accessory dwelling unit authorized under this section shall not be permitted to exercise the setback exception for non-conforming structures provided for in Section 21.58.050 (F).”

However, Government Code section 65852.2, subdivision (a)(1)(D)(vii), states “No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and 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.” Any converted unit may not be subject to setback requirements, whether the structure converted is part of the primary dwelling or a detached accessory structure. Be further advised that “street side” is not a term addressed in statute; only front, rear and side setbacks may apply to any unit. Lastly, Government Code section 65852.2, subdivision (c)(2)(C), prohibits a requirement for “front setbacks... for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks.” The City must clarify that all ADUs are

subject to no more than four feet side and rear setbacks, that converted units are not subject to setback requirements, that front setbacks may not preclude any unit 800 square feet or smaller, and that “street side” setbacks do not apply to ADUs.

- 21.23.030 (E) – *Building Separation* – The Ordinance requires a building separation of ten feet from the primary dwelling unit if the ADU is in front or behind the primary. The same standards are required for separation between an accessory structure and the ADU. However, local standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), may not preclude ADUs created under Government Code section 65852.2, subdivision (e). Therefore, any unit subject to subdivision (e) would be exempt from this requirement. The City must note the exception.
- 21.23.030 (G) – *Size Maximums* – The Ordinance states “The maximum living area for an attached or interior accessory dwelling unit shall not exceed fifty percent of the living area of the primary dwelling unit...” However, interior ADUs created pursuant to Government Code section 65852.2, subdivision (e), from proposed or existing space of the single-family residence or the existing accessory structure, do not have size maximums. The City must remove this size maximum on interior accessory dwelling units.
- 21.23.030 (I)(2) – *Underlying Zoning & Height* – The Ordinance states that for attached ADUs “the height of an attached accessory dwelling unit shall not exceed that specified by the applicable zoning district and/or area or neighborhood plan.” However, Government Code section 65852.2, subdivision (c)(2)(D)(iv), requires “A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower.” Therefore, a conflict could arise if a primary building’s height is lower than a height allowed in current zoning plans, etc. The City should change the language to permit a height of 25 feet or no lower than the primary dwelling structure.
- 21.23.040 (A) and (B) – *JADU Siting* – The Ordinance allows JADUs “...within the allowable floor area of [a] detached accessory dwelling unit.” However, Government Code section 65852.22, subdivision (a)(4), requires all JADUs “...to be constructed within the walls of the proposed or existing single-family residence. For purposes of this paragraph, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” Therefore, while attached garages may be converted to a JADU, a detached ADU may not. The City must amend the language to comply with statute.

- 21.23.040 (G) – *Owner Occupancy* – The Ordinance states “a property with a junior accessory dwelling unit shall be occupied by the property owner...” However, Government Code section 65852.22, subdivision (a)(2), states “Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.” The City must note the exception.
- Section 21.23.060 – *Historic Resource Inventory* – The Ordinance creates special rules for ADUs “on the historic resource inventory”. This is not defined in the Ordinance. Government Code section 65852.2, subdivision (a)(1)(B), allows “standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources.” The Ordinance must define “the historic resource inventory” with reference to the California Register of Historical Resources to prevent conflict with state law.
- 21.23.065 (C) – *Exemption Negation* – The Ordinance discretely lists the local design requirements that “exempt units” are exempted from, then notes “All other standards, requirements, and restrictions of this Chapter shall continue to apply.” However, *no* local design or development standards may preclude any unit subject to Government Code section 65852.2, subdivision (e). The City must remove this section.
- 21.23.070 (F) – *“New Dwelling”* – The Ordinance states “...if the creation of an interior or attached accessory dwelling unit would result in the primary dwelling unit becoming a “new dwelling using portions of the original structure” pursuant to Chapter 18.32 (Determination of Scope of Work), then fire sprinklers shall be required to the same extent as for construction of any other new dwelling unit.” However, Government Code section 65852.2, subdivision (a)(1)(D)(xii) states “Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.” Therefore, the City must remove this section.

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 Van Gorder, of our staff, at (916) 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 black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West  
Housing Accountability Unit Chief