



November 27, 2023

Mr. David Zisser
Assistant Deputy Director
Local Government Relations & Accountability
Housing Policy Development Division
California Department of Housing and Community Development
2020 W. El Camino Avenue, Suite 552
Sacramento, CA 95833
via email to David.Zisser@hcd.ca.gov

Re: HCD Review of San Francisco's Accessory Dwelling Unit Ordinance No. 053-23

Dear Assistant Deputy Director Zisser,

Thank you for your October 26, 2023 transmittal of the California Department of Housing and Community Development's ("HCD") findings regarding San Francisco's accessory dwelling unit ("ADU") Ordinance No. 053-23. The purpose of this letter is to respond to those findings pursuant to California Government Code section 65852.2, subdivision (h)(2)(A). We appreciate your recognition of the City's local ADU approval program, and share HCD's goal of maximizing ADU production under the City's State-mandated ADU programs.

On September 28, 2023, the San Francisco Planning Commission recommended approval, with modifications, of a new proposed ADU ordinance contained in San Francisco Board of Supervisors File. No. 230310 (the "pending ADU ordinance"). That ordinance is now pending at the Land Use and Transportation Committee of the Board of Supervisors. HCD's October 26 letter requests nine amendments to the City's ADU ordinance. As explained further below, the pending ADU ordinance, if enacted with the modifications recommended by the Planning Commission, would address three of HCD's findings.

The Planning Department and Mayor Breed will seek additional amendments to the pending ADU ordinance to address HCD's remaining findings. Some of these additional amendments must be referred back to the City's Planning Commission under section 4.105 of the City's Charter and Planning Code section 302, subsection (d). We are confident that these anticipated changes to San Francisco's ADU approval process will conform the City's State-mandated ADU programs to State law requirements and further facilitate construction of this important type of housing. In the portion of this letter that follows, we restate HCD's findings and describe specifically how we propose to address each of them.

1. **Section 102 – Definitions / JADU** – The Ordinance defines a junior accessory dwelling unit (JADU) as a Dwelling Unit meeting the requirements of subsection 207(c)(6) and is "owner-occupied, unless the

owner resides in the remaining portion of the structure.” Government Code section 65852.22, subdivision (a)(2), does not require owner-occupancy if the owner is another governmental agency, land trust, or housing organization. The Ordinance must be amended to reflect when owner-occupancy is not required.

Response. We will seek an amendment to the pending ADU ordinance to add an exception from the owner occupancy requirements in Government Code section 65852.22, subdivision (a)(2) into the Planning Code's definition of Junior ADU.

2. Section 136(c)(32) – *Lot Depth* – The Ordinance provides that if an ADU is proposed for a single-family home, the rear yard must be 25 percent of the lot depth but in no case less than 15 feet. Government Code section 65852.2, subdivision (c)(2)(C), prohibits any requirements on lot coverage that does not permit at least an 800 square-foot ADU with four-foot side and rear setbacks. The Ordinance must be amended to make clear an 800 square-foot ADU is allowed notwithstanding any limits on rear yard percentage or depth.

Response. Despite the language in question, the City does not currently enforce any lot depth requirements that do not permit at least an 800 square-foot ADU with four-foot side and rear setbacks, nor will it do so upon passage of the pending ADU ordinance. Nonetheless, we will seek a clarifying amendment to the pending ADU ordinance to be explicit that the lot coverage requirements of Planning Code Section 136 do not prohibit construction of an ADU that is no more than 800 square feet with four-foot side and rear setbacks.

3. Section 207(c)(6)(A) – *Applicability* – The Ordinance states, “If construction of the ADU will not meet the requirements of this subsection, the ADU is regulated pursuant to subsection 207(c)(4) and not this subsection 207(c)(6).” The programs presented here – the State Mandated Program and the Local Program – are not sufficiently distinct and do not appear to allow applicants to choose which route they would like to take regarding their ADU or JADU application. The State Mandated Program implements State ADU Law, which creates two paths. First, Government Code section 65852.2, subdivision (a)(3)(A), provides that “[a] permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing....” Second, Subdivision (e)(1) provides that “notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit” for ADUs meeting the requirements under (e)(1). The Local Program creates yet another path. The City must amend the Ordinance to make it clear that there are distinct and separate paths for the development of ADUs and to allow applicants, at their election, to participate in either the State Mandated Program or the Local Program. The City may not automatically transfer an application to Section 207 (c)(4) if the application does not meet the requirements of section 207 (c)(6).

Response. In addition to its Local ADU program, the City allows applicants to elect to participate in either of its two State-mandated ADU programs: the “Hybrid ADU” program, which implements Government Code section 65852.2, subdivision (e); and the “State ADU” program, which implements Government Code section 65852.2, subdivisions (a)-(d). The City does not require ADU permit applicants to participate in the Local ADU program, and does not automatically transfer permit applications from either of the State-mandated approval programs to the Local program. The City and the Planning Department maintain ADU-related websites that both identify all of the City's ADU programs and provide information to help applicants choose the most suitable approval

pathway for their ADU project.¹ The pending ADU ordinance, with the Planning Commission's recommended modifications, would further distinguish the City's State-Mandated ADU programs from the City's Local ADU program by relocating these programs to new, separate sections of the Planning Code and clarifying the text of the Code.

4. Section 207(c)(6)(B)(ii) – *Historic Designation* – The Ordinance states that “[f]or projects involving a property listed in the California Register of Historic Places, or a property designated individually or as part of a historic or conservation district pursuant to Article 10 or Article 11, the ADU or JADU shall comply with any architectural review standards adopted by the Historic Preservation Commission to prevent adverse impacts to such historic resources. Such projects shall not be required to obtain a Certificate of Appropriateness or a Permit to Alter.” These standards under Government Code section 65852.2, subdivision (a)(1)(B), apply to ADUs permitted under section 65852.2, subdivisions (a)-(d); however, ADUs under section (c)(6) of the Ordinance apply to state mandated ADUs permitted under Government Code section 65852.2, subdivision (e). These historic designation standards must be moved to section 207(c)(4) of the Ordinance. Further, under Government Code section 65852.2, subdivision (a)(1)(B), only the California Register of Historic Resources may be used to restrict ADUs. Utilizing a local register of historic resources, or a special district, could preclude ADUs from being created in those areas. Therefore, the City must amend this section to remove the other restriction on special districts or significant lots and move these standards to section 207(c)(4) of the Ordinance.

Response. Government Code section 65852.2, subdivision (a)(1)(b)(i) broadly permits the City to impose objective architectural review standards on ADUs seeking approval under the City's State ADU program. This grant of authority is separate from, and in addition to, subdivision (a)(1)(b)(i)'s authorization of local “standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources.” Furthermore, Government Code section 65852.2, subdivision (e)(7) also broadly permits the City to impose objective standards, “including, but not limited to . . . historic standards” on ADUs under the City's Hybrid ADU program. State ADU law therefore authorizes the City to impose objective architectural review standards on ADUs seeking approval under either of the City's State-mandated programs. We will seek an amendment to the pending ADU ordinance to restate existing law that any architectural review standards adopted by the Historic Preservation Commission that are applicable to State-mandated ADUs must remain objective. We will also seek to add findings to the pending ADU ordinance to explain why the City's ADU controls comply with applicable requirements, pursuant to Government Code section 65852.2(h)(2)(B)(ii).

5. 207(c)(6)(C)(i)(b), (c)(6)(C)(ii)(b), 207(c)(6)(D)(i) and (c)(6)(D)(iii) – *Number of ADUs* – The Ordinance states that “[o]nly one ADU and one JADU is permitted per lot” in (c)(6)(C)(i)(b) and “[t]he lot on which the ADU is proposed does not contain another ADU, but may contain a JADU” in (c)(6)(C)(ii)(b). However, under Government Code section 65852.2, subdivision (e), which this section of the Ordinance is intended to implement, a residential lot may create a minimum of one ADU converted from existing space; one new construction, detached ADU under 800 square feet; and one JADU. Therefore, the City must amend these sections to allow for at least by-right units.

¹ For example, see <https://sfplanning.org/accessory-dwelling-units> and <https://sf.gov/topics/accessory-dwelling-unit-adu>. The Planning Department has prepared extensive materials to assist applicants seeking to construct an ADU, including a chart comparing the City's ADU programs, which may be found at https://sfplanning.org/sites/default/files/documents/adu/ADU_programs_comparison_chart.pdf.

Additionally, the Ordinance states that “[o]nly one ADU will be constructed” in (c)(6)(D)(i) and “[t]he lot on which the ADU is proposed does not contain another ADU or JADU” in (c)(6)(D)(iii). The Ordinance allows only one ADU per lot; however, units created within the proposed or existing space of a primary dwelling, or an existing accessory structure would be created pursuant to Government Code 65852.2, subdivision (e)(1)(A). Subdivision (e) allows for a combination of units to be created such that there may be up to three additional dwelling units. Therefore, the City must amend this section to remove this restriction.

Response. In order to comply with HCD’s interpretation of Government Code section 65852.2, subdivision (e), we will seek amendments to the pending ADU ordinance to permit the construction of up to three ADUs that meet applicable requirements under the City’s Hybrid ADU program.

6. 207(c)(6)(C)(ii)(e), (c)(6)(C)(iv)(c), & (c)(6)(D)(ix) – *Height Restrictions* – The Ordinance requires “a height no greater than sixteen feet.” However, Government Code section 65852.2, subdivision (c)(2)(D), allows for a height of 16, 18, 20, or 25 feet, as applicable. The City must amend the Ordinance to comply with State ADU Law.

Response. To comply with the State ADU law requirements referenced in this finding, the Planning Commission recommended modifications to the pending ADU ordinance to increase height limits to 16, 18, 20, or 25 feet, as applicable.

7. 207(c)(6)(D) – *Subdivision (c)(2)(C) Restrictions* – The Ordinance states that “the City shall not impose limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings, that does not permit construction of an ADU meeting all other requirements that is 800 square feet or less...” However, Government Code section 65852.2, subdivision (c)(2)(C), is more comprehensive, stating that “a local agency shall not establish by ordinance...[a]ny 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.” Imposing additional planning reviews or front setbacks which could preclude ADUs of 800 square feet or less would violate statute. Therefore, the City must amend this section to include these items.

Response. The City does not currently impose any zoning clearance, separate zoning review, or size requirements that do not permit construction of at least an 800 square foot ADU with four-foot side and rear setbacks, nor will it do so upon passage of the pending ADU ordinance. We will seek an amendment to the pending ADU ordinance to incorporate these additional restrictions on City authority into the text of the Planning Code.

8. 207(c)(6)(E)(ii) – *Notification* – The Ordinance states that prior to permit application, a property owner must “[c]ause a notice describing the proposed project to be posted on the subject property for at least 15 days...” However, Government Code section 65852.2, subdivision (a)(7), states that “[n]o other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use

permit under this subdivision.” Requiring 15 days of notification prior to the submittal of an application for an ADU would cause an undue delay in the permitting process. Therefore, the City must remove this requirement.

Response. We will seek amendments to the pending ADU ordinance to remove this notification requirement for ADUs seeking approval under the City's State ADU approval pathway. Nonetheless, we note that Government Code section 65852.2, subdivision (e)(7) grants the City broad authority to impose objective standards, including reasonable notification requirements, on ADUs seeking approval under the City's Hybrid ADU approval pathway. To this end, we will also seek to add findings to the pending ADU ordinance to explain why the City's ADU controls comply with the applicable requirements, pursuant to Government Code section 65852.2(h)(2)(B)(ii).

9. 207(c)(6)(F) – *Review and Approval* – The Ordinance states that “[t]he City shall act on an application for a permit to construct an ADU or JADU under this subsection 207(c)(6) within 60 days from receipt of the complete application, without modification or disapproval, if the proposed construction fully complies with the requirements set forth in this subsection 207(c)(6).” However, “act on” is outdated language, and as of January 1, 2023, Government Code section 65852.2, subdivision (a)(3), states that “[t]he 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...” (Emphasis added.) Therefore, the City must amend this language to comply with the updated State ADU Law.

Response. The pending ADU ordinance, with the Planning Commission's recommended modifications, would amend the Building Code to require the City to approve or deny a permit to construct an ADU or Junior ADU within 60 days from receipt of a complete application.

We look forward to continuing our collaboration with HCD to help achieve our shared goal of addressing the housing needs of the City and State.

Sincerely,

Rich Hillis
Director of Planning

CC (all electronic)

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