DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
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January 9, 2025

Emi Theriault, Deputy Director
Planning Department
County of Sonoma
2550 Ventura Avenue
Santa Rosa, CA 95403

Dear Emi Theriault:

RE: Review of Sonoma County's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, §§ 66310 – 66342)

Thank you for submitting the County of Sonoma (County) accessory dwelling unit (ADU) Ordinance No. 6458 (Ordinance), adopted December 5, 2023, 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 66326, subdivision (a). HCD finds that the Ordinance does not comply with State ADU and junior accessory dwelling unit (JADU) Laws in the manner noted below. Under Government Code section 66326, subdivision (b)(1), the County has up to 30 days to respond to these findings. Accordingly, the County must provide a written response to these findings no later than February 8, 2025.

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

1. *Senate Bill (SB) 1211 (Chapter 296, Statutes of 2024)* – As of January 1, 2025, there are changes to Government Code section 66323. Subdivision (a)(4)(A)(ii), now allows for "…up to 8 detached ADUs to be created on a lot with an existing multifamily dwelling, provided that the number of ADUs does not exceed the number of existing units on the lot, and up to 2 detached ADUs on a lot with a proposed multifamily dwelling." Additionally, subdivision (b) now states, "A local agency shall not impose any objective development or design standard that is not authorized by this section upon any accessory dwelling unit that meets the requirements of any of paragraphs (1) to (4), inclusive, of subdivision (a)." Therefore, the County must make adjustments to the Ordinance to account for these changes.

2. *Assembly Bill (AB) 2533 (Chapter 834, Statutes of 2024)* - As of January 1, 2025, there will be changes to Government Code section 66332, subdivisions (a) – (b) and added subdivisions (d) – (f) which makes changes to permitting unpermitted ADUs,

added the same protections for JADUs, and set additional requirements for local agencies. The County should review these new requirements and adjust the Ordinance to comply with State ADU Law.

3. *Statutory Numbering* - The Ordinance contains several references to code sections that were deleted by SB 477, effective March 25, 2024. These include Government Code sections 65852.2, 65852.22 and 65852.26. The contents of these sections were relocated to Government Code, Title 7, Division 1, Chapter 13 (sections 66310-66342, see Enclosure). The County must amend the Ordinance to refer to the correct code sections.

4. Section 26-88-060 a, h.2.i – *JADU Governance* – The Ordinance states, "This section implements the requirements of Government Code § 65852.2 and the provisions of the General Plan Housing Element that encourage the production of affordable housing by means of accessory dwelling units (ADUs)." However, the Ordinance does not here or anywhere else reference Government Code section 66333. The Ordinance later states, "On a lot that contains an existing or proposed single-family dwelling: One ADU One ADU attached to a proposed single family dwelling or within the existing space of a single family dwelling or accessory structure, and one detached, new construction ADU." It does not here mention JADUs in any way.

   Government Code section 66323, subdivision (a)(1) requires the ministerial approval of "One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling…" Therefore, the omission JADU allowance is inconsistent with State ADU Law. The County must amend the Ordinance to provide for JADUs.

5. Section 26-88-060 b.4 and 5 – *"Legally Permitted"* – The Ordinance defines "accessory structure" as "a legally permitted structure that is accessory and incidental to a primary residence located on the same lot." It then defines "existing space" as "means floor area that is legally permitted or recognized as legal by the Director."

   However, Government Code section 66322, subdivision (b) 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." Should the County not recognize a structure as legally permitted or "existing" due to not being legally permitted, this may be inconsistent with State ADU Law when the structure meets the conditions of section 66322, subdivision (b).

Additionally, the term “recognized as legal by the Director” is a subjective term. Government Code section 66314, subdivision (b) requires that ADU ordinances “Impose **objective** standards on accessory dwelling units…” and section 66313, subdivision (h) defines ‘objective standards’ as “standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Requiring existing space to be “recognized as legal by the Director” for the purposes of ADU development, is not objective and inconsistent with State ADU Law. The County must amend these sections of the Ordinance to comply with State ADU Law.

6. Section 26-88-060 c.1 – *Denial* – The Ordinance states, “The Department shall approve or deny an application to create an ADU within 60 days from the date it receives a completed application….” Government Code section 66317, subdivision (b) states, “If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subdivision (a), the permitting agency shall, within the time period described in subdivision (a), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.” Therefore, the County must amend the Ordinance and add this provision to comply with State ADU Law.

7. Section 26-88-060 c.2 – *Agricultural District* – The Ordinance states, “Where a lot contains the maximum agricultural dwelling units permitted on the lot, those units are deemed ADUs and no additional ADUs are permitted.” The term “agricultural dwelling units” does not appear elsewhere in the Ordinance and it is unclear as to whether this creates an inconsistency with State ADU Law. Please clarify that ADU applications subject to State ADU Law will be ministerially permitted without reference to other categories of dwelling units onsite.

8. Section 26-88-060 c.3 – *Z Combining District* – The Ordinance states, “ADUs are prohibited in the Z (Accessory Dwelling Unit Exclusion) Combining District.” There is no data, substantiation, or explanation given for the prohibition. Section 26-76-005 establishes the section and states, “The purpose of this district is to provide for the exclusion of accessory dwelling units in the following areas: (a) Areas where there is an inadequate supply of water for drinking or firefighting purposes; (b) Areas where there are inadequate sewer services or danger of groundwater contamination; (c) Areas where the addition of accessory dwelling units would contribute to existing traffic hazards or increase the burden on heavily impacted streets, roads or highways; and (d) Areas where, because of topography, access or vegetation, there is a significant fire hazard.” The municipal code cites Ordinance Number 6191, the archived version of which provides no data, substantiation, or explanation.

The County has not adequately demonstrated that new ADUs – as opposed to new single-family or multifamily residential development – would adversely impact public safety or water and sewer infrastructure. Until and unless the County adopts detailed analysis and findings of fact for each of the four claimed conditions to support the prohibition of ADU development in these areas, the County must approve ADU applications with reference only to State ADU Law and amend the Ordinance to remove this section. Therefore, denials of ADU applications due to inadequate water supply for drinking or firefighting must be made on a case-by-case basis, not generally.

9. Section 26-88-060 h.2.ii and iii – *Multifamily and Section 66314* – The Ordinance states, "On a lot that contains an existing multifamily dwelling: Two ADUs, detached from the multifamily structure, and up to 25 percent of the existing units in the multifamily dwelling, but at least one, converted from existing non-livable space in a multifamily structure," and "On a lot that contains a proposed multifamily dwelling: Two ADUs, detached from the multifamily structure." With the passing of Senate Bill (SB) 1211 (Chapter 296, Statutes of 2024), there are changes to Government Code section 66323. Subdivision (a)(4)(A)(ii), now allows for "…up to 8 detached ADUs to be created on a lot with an existing multifamily dwelling, provided that the number of ADUs does not exceed the number of existing units on the lot, and up to 2 detached ADUs on a lot with a proposed multifamily dwelling."

   Additionally, Section 66314, subdivision (d)(2) states, "The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling," and subdivision (d)(3) states, "The accessory dwelling unit is either attached to, or located within, the proposed or existing **primary dwelling**, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages." Reference to a primary dwelling, rather than specifically a single-family dwelling or multifamily dwelling, establishes that such a unit is permissible with either format of primary dwelling. Therefore, the County must amend the Ordinance to include the changes to Government Code section 66323 (a)(4)(A)(ii), and to include allowances provided by Government Code section 66314 (d)(2).

10. Section 26-88-060 h.3.iv – *Riparian Corridor* – The Ordinance requires that ADUs "Comply with applicable permit requirements for development within the Riparian Corridor setback. An application for an ADU proposed within the RC setback shall not be considered complete until the applicable permit for development within the Riparian Corridor setback is obtained." However, Government Code section 66314, subdivision (d)(7) 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." Furthermore, section 66315 states, "No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer." The application of setback standards and an additional permit for Riparian Corridor setbacks is inconsistent with State ADU Law. The County must remove these sections from the Ordinance.

11. Section 26-88-060 h.4.i.A and B – *Roof Pitch and Height* – The Ordinance states that for new construction detached ADUs, "On lots with an existing or proposed single-family residence, ADUs shall be limited to the height limit for accessory structures established by base zoning district, except that the maximum allowed height shall not be less than 18 feet." It later states, "On lots with existing or proposed multifamily dwellings, ADUs shall be limited to 18 feet in height."

    However, Government Code section 66321, subdivision (b)(4)(B) requires local ordinances to allow "A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. A local agency **shall also allow an additional two feet in height** to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit." Therefore, the County must amend the Ordinance to comply with State ADU Law.

12. Section 26-88-060 h.7 – *Lot Coverage* – The Ordinance states, "The lot coverage limitation of the base zoning district shall be applied, unless compliance with lot coverage would not permit an ADU of 800 square feet, meeting applicable height standards, with four-foot side and rear yard setbacks." However, as written this lot coverage requirement could apply to a unit created out of converted space subject to Government Code section 66323, which may not be precluded by local development standards. The County must note the exceptions.

13. Section 26-88-060 k – *Affordability Program* – The Ordinance states, "In addition to the standards set forth above, an ADU that is proposed to be made available for rent to another household in compliance with Article 89 requirements shall meet the following additional standards…" Upon review, Article 89 appears to be an affordability program that gives developers options

on satisfying affordable housing requirements triggered by any new residential development and there may be no inconsistency with State ADU Law. HCD wishes to clarify – whether the requirements in Section 26-88-060 (k) and Article 89 apply to units subject to Government Code section 66323. The County's assistance on this matter would be greatly appreciated.

14. Section 26-88-060 m.3 – *Sprinklers* – The Ordinance states, "Fire sprinklers shall not be required in the ADU if the primary residence is not required to have fire sprinklers. Fire sprinklers may be required if a structure containing an ADU is greater than 1,200 square feet." However, Government Code section 66314, subdivision (d)(12) and section 66323, subdivision (c) state, "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 County must amend the Ordinance to comply with State ADU Law.

Please note that the County has two options in response to this letter.[1] The County can either amend the Ordinance to comply with State ADU Law[2], or adopt the Ordinance without changes and include findings in its resolution adopting the Ordinance that explain the reasons the County believes that the Ordinance complies with State ADU Law despite HCD's findings.[3] If the County fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD must notify the County and may notify the California Office of the Attorney General that the County is in violation of State ADU Law.[4]

HCD appreciates the County's efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the County in fully complying with State ADU Law. Please contact Mike Van Gorder, of our staff, at mike.vangorder@hcd.ca.gov if you have any questions or would like HCD's technical assistance in these matters.

Sincerely,

Jamie Candelaria

Jamie Candelaria
Senior Housing Accountability Manager
Housing Policy Development Division

[1] Gov. Code, § 66326, subd. (c)(1).
[2] Gov. Code, § 66326, subd. (b)(2)(A).
[3] Gov. Code, § 66326, subd. (b)(2)(B).
[4] Gov. Code, § 66326, subd. (c)(1).

State ADU/JADU Law Statutory Conversion Table

New Government Code Sections	Previous Government Code Sections
Article 1. General Provisions	
66310	65852.150 (a)
66311	65852.150 (b)
66312	65852.150 (c)
66313	General Definition Section 65852.2 (j) 65852.22 (j)
Article 2. Accessory Dwelling Unit Approvals	
66314	65852.2(a)(1)(A), (D)(i)-(xii), (a)(4)-(5)
66315	65852.2 (a)(8)
66316	65852.2 (a)(6)
66317	65852.2 (a)(3), (a)(7)
66318	65852.2 (a)(9), 65852.2 (a)(2)
66319	65852.2 (a)(10)
66320	65852.2 (b)
66321	65852.2 (c)
66322	65852.2 (d)
66323	65852.2 (e)
66324	65852.2 (f)
66325	65852.2 (g)
66326	65852.2 (h)
66327	65852.2 (i)
66328	65852.2 (k)
66329	65852.2 (l)
66330	65852.2 (m)
66331	65852.2 (n)
66332	65852.23.
Article 3. Junior Accessory Dwelling Units	
66333	65852.22 (a)
66334	65852.22 (b)
66335	65852.22 (c)
66336	65852.22 (d)
66337	65852.22 (e)
66338	65852.22 (f)-(g)
66339	65852.22 (h)
Article 4. Accessory Dwelling Unit Sales	
66340	65852.26 (b)
66341	65852.26 (a)
66342	65852.2 (a)(10)