

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

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April 1, 2022

Elizabeth Corpuz
Director of Planning and Building Services
16600 Civic Center Dr.
Bellflower, CA 90706

Dear Elizabeth Corpuz:

RE: Review of Bellflower's Accessory Dwelling Unit (ADU) Ordinance

Thank you for submitting the City of Bellflower ("the City") accessory dwelling unit (ADU) Ordinance No. 1401(Ordinance) adopted September 14, 2020 to the California Department of Housing and Community Development (HCD). The Ordinance was received on October 6, 2020. HCD has reviewed the Ordinance and is submitting these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD has determined that the Ordinance does not comply with section 65852.2 in the manner noted below. Under the 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 April 29, 2022.

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

- 17.17.010 – *Expiry* – The Ordinance states that "This Chapter will be automatically repealed on December 31, 2029. At that time, all previous regulations governing ADUs will be effective for all purposes." Be advised Government Code section 65852.2, subdivision (a)(4), states that "If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section." The planned expiration of the City's current ADU Ordinance, resulting in the reinstatement of the City's previous ADU Ordinance, will likely be noncompliant; however, HCD has not reviewed the former ADU ordinance. If the City repeals their current ADU ordinance, the appropriate default governance for ADUs built in the City would be State ADU Law. If an alternate ADU ordinance is used, it would need to be reviewed and deemed compliant by HCD.

- 17.17.040 (A) – *Impermissible Standards* – The Ordinance applies the standards of the underlying zoning to potential ADUs and states that, in the case of a conflict between zone development standards and the standards set within the ordinance, the “more restrictive applies unless otherwise provided by California law”. As there is no further elaboration, and this section addresses degrees of restrictiveness, the City should add language that reflects Government Code section 65852.2, subdivision (c)(2)(C), which prohibits jurisdictions from applying “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, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.”
- 17.17.040 (G) – *Subjective Design Standards* – The Ordinance requires ADUs to be “harmonious” with the neighboring buildings. Government Code section 65852.2, subdivision (a)(4), states that “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 “harmonious” are subjective and therefore discretionary, potentially violating state statute. The City must remove such discretionary language.
- 17.17.040 (J)(1) – *Impermissible Location Constraints (Utility)* – The Ordinance states that ADUs may not be in areas identified as being “significantly impacted by insufficient capacity for sewers, traffic circulation, parking, public utilities or similar infrastructure needs”. However, Government Code section 65852.2, subdivision (a)(1)(A), states “the designation of areas [where ADUs are permitted] may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.” The City has not designated the areas where ADUs are not allowed. Any designation of an area where ADUs are not permitted may not be made on an ad-hoc basis, but rather must be designated and supported by the City’s findings. Parking, public utilities and other infrastructure needs are not a basis in statute for the designation of areas that restrict ADUs. Lastly, ADUs built under Government Code section 65852.2, subdivision (e), are not subject to local development standards or location constraints. The City must remove this bullet point or reduce its language to only prohibiting units where sewer or water are insufficient, as supported by findings.
- 17.17.040 (J)(2/4) – *Omission of Multifamily ADU Locations* – The Ordinance states that one of the locations that is permissible is that of “contained within”, “attached to” or “detached from the primary single-family dwelling”. The

ordinance omits mention of multifamily dwellings in its list of permitted locations of ADUs. As Government Code section 65852.2, subdivision (a)(1), provides for the development of “the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use” and Government Code section 65852.2, subdivision (a)(1)(D), refers to “primary dwellings”, the City should change references to “the primary single-family dwelling” to “the primary dwelling”.

- 17.17.040 (J) (5/6) – *Impermissible Location Constraints (Physical)* – The Ordinance states that “ADUs must be located behind the rear building line of a primary structure”, and “if the ADU is new construction, a minimum of 11 feet must be provided between any wall of a detached ADU and any wall of the primary dwelling.” Both are impermissibly restrictive. “Subordinating” an ADU behind a primary structure and requiring 11 feet of separation are both considered undue constraints under Government Code section 65852.150, subdivision (b), which requires that “provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.” Furthermore, Local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created under subdivision (e). Therefore, the City must remove these sections from the Ordinance.
- 17.17.050 – *Omission of Proposed Multifamily ADUs* – The Ordinance states that “ADUs may only be constructed in conjunction with either an existing or proposed single-family dwelling or an existing multifamily dwelling.” The Ordinance does not address the construction of ADUs in conjunction with a proposed multifamily dwelling. To comply with Government Code section 65852.2, subdivision (a)(1)(D)(ii), which provides for ADUs on lots “zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling,” the City should amend the language to add “existing or proposed multifamily dwellings”.
- 17.17.090 (A/B) – *Application Procedure* – The Ordinance states that “unless the application otherwise requires a conditional use permit, variance or other discretionary approval, the Director will review the application,” and establishes that “the Director must approve, approve with conditions, or deny the application within 60 days.” The Ordinance does not establish who the Director is and there is no further description of the permitting process. This is impermissibly vague and creates the possibility of a subjective or discretionary review in violation of Government Code section 65852.2, subdivision (a)(4). Furthermore, Government Code section 65852.2, subdivision (a)(3), states 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.” (Emphasis added.) Therefore, the City must define who “the Director” is by title and department and positively establish a ministerial permit process for all ADUs governed by state statute.

In these respects, revisions are necessary to comply with statute.

HCD will consider any written response to these findings, such as a revised ordinance or a detailed plan to bring the ordinance into compliance with law by a date certain, before taking further action authorized pursuant to Government Code section 65852.2. Please note that HCD may notify the Attorney General’s Office in the event that the City fails to take appropriate and timely action under section 65852.2, subdivision (h).

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 ADU law. Please contact Mike Van Gorder, of our staff, at (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 black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Housing Accountability Unit Chief