

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

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June 3, 2022

Ryan Leonard  
Senior Planner  
City of Hesperia  
9700 Seventh Avenue  
Hesperia, CA 92345

Dear Ryan Leonard:

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

Thank you for submitting to the California Department of Housing and Community Development (HCD) the City of Hesperia (City) accessory dwelling unit (ADU) Ordinance No 2020-04 and subsequent Ordinance No 2021-01 that amended parts of Ordinance No 2020-04 as well as other unrelated parts of the City's municipal code. These ordinances were received on January 4, 2022. HCD has reviewed the ordinances and is submitting these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD has determined that parts of Ordinance No 2021-01 do 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 July 1, 2022.

The adopted ordinances address many statutory requirements; however, HCD finds that the ordinances do not comply with State ADU Law in the following respects:

- No 2021-01; 16.12.360 (D)(1) – *Permitted Areas* – The Ordinance states that “An accessory dwelling unit may only be permitted on lots that are zoned for agricultural, single family, multi-family, or mixed uses and that contain an existing or proposed single-family or multi-family dwelling.” However, the Hesperia Municipal Code section 16.16.085 states that ADUs are not permitted in the R-3 zone. This is impermissible, as Government Code statute 65852.2, subdivision (a)(1)(D)(ii), requires ADU ordinances to permit ADUs anywhere a “...lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.” Therefore, the prohibition in the R-3 zone as noted in 16.16.085 is a violation of state statute and is internally inconsistent with section 16.12.360. The City must update section 16.16.085 to permit ADUs and

should state in the language of 16.12.360 that ADUs are permitted in any zone that allows residential or mixed use.

- No 2021-01; 16.12.360 (E)(1) – *Omitted Reference to Multifamily* – The Ordinance states that “The accessory dwelling unit may be either attached to or detached from an existing or proposed *single-family residence*” (emphasis added). Government Statute section 65852.2, subdivision (j)(1), defines an ADU as “an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing *primary residence*.” Section (E)(1) of the Ordinance omits reference to multifamily buildings by referring only to a single-family residence. Therefore, the City should change the language to “primary residence” and refer to single-family *and* multifamily dwelling residential use per Government Code section 65852.2, subdivisions (a)(1), (a)(1)(D)(ii) and (iii).
- No 2021-01; 16.12.360 (E)(3) – *Entry Conditions* – The Ordinance states that the entrance to an ADU “shall be separate from the entrance to the primary unit and shall be installed in a manner as to eliminate an obvious indication of two units in the same structure.” However, “obvious indication” is a subjective term. 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.” Since state law requires that ADUs and junior accessory dwelling units have an independent entry into the unit (Gov. Code, § 65852.2, subd. (e)(1)(a)(ii) and Gov. Code, § 65852.22, subd. (a)(5)), a constraint on the location of an entry door may make the creation of an additional housing unit infeasible. 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 Government Code section 65852.2, subdivision (e), and the restrictions as implied would not be permissible. Therefore, the City must remove this requirement.
- No 2021-01; 16.12.360 (E)(10) – *Subjective Constraint Descriptions* - The Ordinance states that an ADU “shall not cause excessive noise, traffic, or other disturbances to the existing neighborhood or result in significantly adverse impacts on public services and resources.” As with above, “excessive noise, traffic or other disturbances” and “significantly adverse impacts” are subjective terms, and per Government Code section 65852.2, subdivision (a)(4), such terms may not be used in any approvals process. Furthermore, as the Ordinance references “adverse impacts on public services and resources”, Government Code section 65852.2, subdivision (a)(1)(A), states that “designation of areas [where ADUs may be permitted] may be based on the adequacy of water and sewer services.” Jurisdictions may use public service availability to determine areas where ADUs may be placed, but the City may not allow or disallow individual units in such areas based on public services. Therefore, the City must remove “shall not cause excessive noise, traffic, or other disturbances to the existing neighborhood or result in significantly adverse impacts on public services and resources.”

In these respects, revisions are necessary to comply with statute. 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 Ordinances 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 Mike Van Gorder, of our staff, at (916) 776-7541 or at [mike.vangorder@hcd.ca.gov](mailto:mike.vangorder@hcd.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" written in a larger, more prominent script than the last name "West".

Shannan West  
Housing Accountability Unit Chief