

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



February 23, 2022

Laura Stokes, Housing Supervisor
City of San Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, CA 92675

Dear Laura Stokes:

**RE: Review of San Juan Capistrano's Accessory Dwelling Unit (ADU) Ordinance
under ADU Law (Gov. Code, § 65852.2)**

Thank you for submitting the City of San Juan Capistrano's ("the City") accessory dwelling unit (ADU) ordinance (No. 1077) adopted March 17, 2020 ("the Ordinance"), to the California Department of Housing and Community Development (HCD). 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 March 24, 2022.

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

- Section 9-3.501.1 (c)(5)(B/C) – *Efficiency Kitchen* – The Ordinance defines an efficiency kitchen to include "a food preparation counter or counters with an area of at least 15 square feet" and "food storage cabinets with a minimum of 30 square feet of shelf space." However, Government Code section 65852.22, subdivisions (a)(6)(A) and (B), only require that an efficiency kitchen include a food preparation counter and storage cabinets that are "of reasonable size in relation to the size of the JADU..." There is no specific size requirement in statute, which increases flexibility for the developer and therefore may result in more junior ADUs (JADUs). As written, the size requirements could act as a constraint for JADUs. Therefore, the City should remove the size references.
- Section 9-3.501.1 (d)(1)(A) – *Unit Mixture* – The Ordinance creates an "integrated ADUs or JADUs on Single-family lots" category that allows "one ADU or one JADU". This reference is outdated. Current Government Code section

65852.2, subdivision (e)(1)(A), provides for “one accessory dwelling unit and one junior accessory dwelling unit per lot” (emphasis added), and the ADU in an ADU/JADU mixture can be either attached or detached. Therefore, the City should change “or” to “and” or make a similar correction that brings the local ordinance into compliance with ADU law.

- Section 9-3.501.1 (d)(2)(B) – *Fees* – The Ordinance states that the City may charge a fee to reimburse costs, “including the costs of adopting or amending the City’s ADU ordinance.” It is not clear if this fee structure is independent of the impact fee and utility fee structures outlined in Section 9-3.501.1 (g), or whether the imposition of this cost is unique to ADUs. This lack of clarity creates the possibility of a violation of Government Code section 65852.2, subdivision (f), which states that “[a] local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.” Therefore, the City should remove the reference or clarify how the fee in this section will be imposed while ensuring that such an imposition does not violate state statute.
- Section 9-3.501.1 (e)(5) & (e)(7)(A) – *Separate Conveyance* – The Ordinance currently prohibits the separate sale of an ADU or JADU. Government Code section 65852.26, subdivision (a)(1), creates a narrow exception to allow separate conveyance of ADUs with the involvement of qualified nonprofit housing organizations. The City should modify its code to allow for such an exception.
- Section 9-3.501.1(f)(1)(A) – *Attached ADU Guidelines Limiting Bedrooms* – The Ordinance states that for “a detached or attached ADU subject to this subsection (f)... no more than two bedrooms are allowed.” This is impermissible. Limiting the number of bedrooms within an ADU—well beyond the limits imposed by the building code—may limit housing available to larger households. HCD’s research indicates that the number of persons in households may vary based on specific characteristics that are protected under state and federal fair housing laws, such as familial status (presence of children until the age of 18), married/non-married households, and race or ethnicity. Limiting the number of bedrooms might constrain housing choice for these groups of people and be a discriminatory effect under California Code of Regulations, title 2, section 12060. Therefore, the City should remove the limitation on bedrooms.
- Section 9-3.501.1 (f)(7)(E), (G), (H) and (I) – *Architectural Requirements* – The ordinance requires that “if the ADU would be visible from an adjoining public right-of-way, the roof slope of the ADU must match the dominant roof slope of the primary dwelling” (subd. E), that “the “ADU entrance must be located on the side or rear building façade, not facing the public right of way” (subd. G), that “no new window of the ADU may have a direct line of sight to a contiguous residential property” (subd. H), and that “all windows of the ADU that are located less than

20 feet from an adjoining side or rear property line must either be clerestory with the bottom of the glass at least 6 feet above the finished floor or utilize frosted or obscuring glass” (subd. I). However, Government Code section 65852.150, subdivision (b), requires that “provisions... 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.” HCD considers the above requirements as being excessive and burdensome in violation of state statute. Therefore, the City should remove these design requirements or modify the requirement to include “if feasible.”

- Section 9-3.501.1 (f)(8) – *Historical Protections* – The ordinance provides that “architectural treatment of a new attached or detached ADU to be constructed on a lot that has an identified historical resource listed on... *a local register* of historic places must comply with all applicable ministerial requirements imposed by the Secretary of the Interior.” This is not consistent with ADU law. Under Government Code section 65852.2, subdivision (a)(1)(B)(i), an ordinance may “impose standards on accessory dwelling units ... that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources.” Locally registered resources that are not also state listed would not fall within this provision. The Ordinance should be revised to limit sites to those allowed by state ADU law.
- Section 9-3.305.1 (g)(2)(B) – *Utility Fees* – The Ordinance states that “[a]ll ADUs and JADUs” that are *not* created from preexisting converted space “require a new separate utility connection directly between the ADU or JADU and the utility.” (Emphasis added.) Per Government Code section 65852.22, subdivision (e), “for purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.” Therefore, no direct utility connection may be required for JADUs. Furthermore, the Ordinance as written could require utility connection for a certain new-construction ADUs in violation of statute. Government Code section 65852.2, subdivision (f)(4), states that “for an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility...” and subdivision (e)(1)(A) permits “One accessory dwelling unit and one junior accessory dwelling unit per lot with a *proposed* or existing single-family dwelling.” Therefore, an ADU built under subdivision (e)(1)(A) that is part of a proposed single-family home may not be required to provide a utility connection. The City should remove references to JADUs and add a note to explain the exemption for ADUs built under subdivision (e)(1)(A).

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 provided 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, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" and the last name "West" clearly distinguishable.

Shannan West
Housing Accountability Unit Chief