

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

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March 13, 2023

Tony Stewart, Director of Community Development
City of Port Hueneme
Community Development Department
250 N. Ventura Road
Port Hueneme, CA 93041

Dear Tony Stewart:

**RE: Review of Port Hueneme's Accessory Dwelling Unit (ADU) Ordinance under
State ADU Law (Gov. Code, § 65852.2)**

Thank you for submitting the City of Port Hueneme (City) accessory dwelling unit (ADU) Ordinance No. 791 (Ordinance), adopted January 17, 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 65852.2, subdivision (h). HCD finds that the Ordinance does not comply with section 65852.2 in the manner noted below. Under that 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 12, 2023.

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

- 10802 (D) and (D)(5) – *ADU Limitation* – The Ordinance states that “[o]nly one (1) accessory dwelling unit shall be allowed on a single lot of record....” And that “A lot may contain up to one ADU and one JADU...” However, Government Code section 65852.2, subdivision (e)(1), states that “[n]otwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following: (A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling...(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure.” Moreover subparagraph (B) permits “[o]ne detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks.” The use of the term *any* followed by an enumeration of by-right ADU types permitted indicate that any of these ADU types can be combined on a lot zoned for single family dwellings. This permits the creation of

one converted ADU, one detached, new construction ADU, and one JADU. The City must amend it to reflect statute.

- 10802 (D)(5)(a)(3) – *Setbacks* – The Ordinance states that “A lot may contain up to one ADU and one JADU is all of the following apply: ...the side and rear setbacks are sufficient for fire and safety.” However, Government Code section 65852.2, subdivision (a)(1)(B)(i), allows the City to impose objective standards on dwelling units, and pursuant to subdivision (j)(7), “objective standards” means “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.” Additionally, Government Code section 65852.2, subdivision (a)(1)(D)(vii), states that a setback of no more than four feet from side and rear lot lines shall be required for an ADU. Therefore, the City must amend the Ordinance to comply with State ADU Law and should clearly indicate what “sufficient for fire and safety” means so that subjective standards are not being applied.
- 10802 (D)(5)(b)(3) and (D)(6)(b) – *Height* – The Ordinance states that a detached new construction accessory dwelling unit shall have a maximum height of 18 feet. However, Government Code section 65852.2, subdivision (c)(2)(D)(ii), prohibits a local agency from limiting “[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 City must amend the Ordinance to allow for an additional two feet of height when applicable.
- 10802 (D)(7) – *Design Requirements* – The Ordinance states that “[t]he architectural treatment and exterior composition of the ADU must be of the same materials, colors and architectural styling of the primary unit, or the entire structure primary dwelling unit must be modified to match the proposed architecture of the ADU.” However, local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), cannot preclude the approval of ADUs created under subdivision (e). The City must note the exception.
- 10802 (D)(8) – *Entry* – The Ordinance states “[i]f the accessory dwelling unit has a separate entrance from the primary housing unit, the entrance of the accessory dwelling unit cannot face the front property line or must otherwise be oriented so as to clearly subordinate to the primary entrance of the primary housing unit.” Statutes for both ADUs and JADUs require independent entry

into the unit. (Gov. Code, §65852.2, subd. (e)(1)(A)(ii) and Gov. Code, § 65852.22, subd. (a)(5)). Furthermore, local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), may not preclude ADUs created under Government Code section 65852.2, subdivision (e). Therefore, the City must amend the Ordinance to comply with State ADU Law.

- 10802 (E)(3) – *Multifamily and Subdivision (a)* – The Ordinance states that “[n]ot more than two detached ADUs may be located on a lot that contains an existing multifamily dwelling” in accordance with Government Code section 65852.2, subdivisions (e)(1)(C) and (e)(1)(D). However, it omits the creation of ADUs with *proposed* multifamily buildings subject to Government Code section 65852.2, subdivision (a). Government Code section 65852.2, subdivision (a)(1)(D)(ii), requires ministerial approval for ADUs when “[t]he lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.” Therefore, the City must add language to conform to State ADU Law.
- 10802 (F)(6) – *Parking* – The Ordinance requires replacement parking in the event that a garage is converted to a JADU. However, Government Code section 65852.22, subdivision (b)(1), states “[a]n ordinance shall not require additional parking as a condition to grant a permit.” Therefore, the City must remove this requirement.
- 10802 (G)(2) – *Affordability Covenant* – The Ordinance requires a deed restriction with an automatically renewing 55-year term to restrict ADU rents to low- or very low-income levels. However, Government Code section 65852.2, subdivision (a)(8), states “[t]his subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed except that, subject to subparagraph (B), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.” Therefore, any manner of affordability covenant exceeds statute.

Furthermore, this restriction appears to have the practical effect of *requiring* rental and *disallowing* occupation by a relative or any other tenant without payment. This may constrain housing choice and result in discriminatory effects on families with children, people with disabilities, and other protected groups in violation of state and federal fair housing laws, including but not limited to Government Code section 65008, subdivisions (a)(1)(A) and (b)(1)(B)(i).

Lastly, requiring such a deed restriction as a condition of approval constitutes a local regulation on a proposed ADU that violates statute; Government Code

section 65852.2, subdivision (a)(7) states “[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.” In summary, the City must remove this section.

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 Ordinance 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 provided in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please contact Mike Van Gorder, of our staff, at (916) 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