

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

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August 29, 2022

Ken Rukavina, Director of Community Development
Community Development Department
City of Rancho Palos Verdes
30940 Hawthorne Boulevard
Rancho Palos Verdes, CA 90275

Dear Ken Rukavina:

**RE: City of Rancho Palos Verdes' Accessory Dwelling Unit (ADU) Ordinance –
Letter of Technical Assistance**

The California Department of Housing and Community Development (HCD) thanks the City of Rancho Palos Verdes (City) for submitting accessory dwelling unit (ADU) Ordinance Number 640 (Ordinance) and for its response to HCD's May 21, 2021, written findings of non-compliance. HCD appreciates the time and effort the City took in crafting its June 18, 2021, response.

Nevertheless, HCD has significant concerns with the City's response as it fails to address substantial inconsistencies between the City's zoning code and State ADU Law. Per the City's request, HCD is providing this Letter of Technical Assistance in hopes that it will serve as a guide to outline the steps the City must take to comply with state law.

HCD requests that the City respond to this letter no later than September 28, 2022, with a detailed plan of action, with dates and deadlines, to bring its ordinance into compliance pursuant to Government Code section 65852.2, subdivision (h)(2)(B). Specifically, to bring its ADU ordinance into compliance, the City must either amend the Ordinance according to HCD's findings, pursuant to Government Code section 65852.2, subdivision (h)(2)(B)(i), or readopt the Ordinance without changes and make express findings via resolution explaining the reasons the City believes it has complied with State ADU Law despite HCD's findings pursuant to Government Code section 65852.2, subdivision (h)(2)(B)(ii). HCD understands that the City has recently begun the process of making some amendments, including a Planning Commission hearing on August 23, 2022. While HCD has not substantively reviewed the proposed amendments, this letter may offer additional guidance to help the City make updates consistent with HCD's prior findings.

Background and Summary of Issues

In its May 21, 2021, findings, HCD found that Municipal Code section 17.10.020.C violates Government Code section 65852.2, subdivisions (a) and (e). Those Government Code sections were intended to facilitate the ministerial development of ADUs in residential areas to address critical housing needs and the housing crisis. (Gov. Code, § 65852.2, subds. (a)(3), (a)(4), and (e)(1).)

In its June 18, 2021, letter, the City indicated that it would explore textual revisions to address a number of HCD's findings. While the City does not appear to have made those changes yet, it is HCD's understanding that once the City receives this letter, it will begin the process of adopting them.

However, the City rejected HCD's findings related to Municipal Code section 17.10.020.C., which prohibits ADUs on lots that are located in a Very High Fire Hazard Severity Zone (VHFHSZ) unless the lot has two distinct means of vehicular access. The Ordinance goes on to state that ADUs located in a VHFHSZ may be allowed with a conditional use permit (CUP), and the City's letter clarifies that the CUP is needed to "assure that ADUs proposed to be located within a [VHFHSZ] are on streets with two distinct means of vehicular access...."

To explain its position, the City stated in its letter that it is asking for "a means to manage and control the development of ADUs in a manner that can ensure the safety of the public." Although it does not cite the statute, the City seems to be relying on Government Code section 65852.2, subdivision (a)(1)(A), which states that a local agency may adopt an ordinance that designates areas where ADUs may be permitted "based on ... the impact of accessory dwelling units on traffic flow and public safety."

As explained below, the City has not adequately demonstrated that ADUs will impact public safety in the VHFHSZ and that the prohibition and CUP requirement is therefore justified. Furthermore, even if the City does provide adequate justification for this restriction on ADUs that fall under Government Code section 65852.2, subdivision (a), the City may not justify such a restriction on ADUs that fall under subdivision (e). In addition, a CUP is discretionary, thus violating the state requirement that ADUs be approved ministerially. (Gov. Code, § 65852.2, subds. (a)(3) and (4); (b); and (e)(1).)

Finally, the City has not taken the necessary steps to bring its ordinance into compliance with State ADU Law either by amending the Ordinance or by adopting findings explaining why the City believes the Ordinance complies with State ADU Law despite HCD's findings. (Gov. Code, § 65852.2, subd. (h)(2)(B).)

The City must either demonstrate that ADUs are a public safety risk to justify restrictions in the VHFHSZ or remove the prohibition and CUP requirement for subdivision (a) ADUs

Under Government Code section 65852.2, subdivision (a), the City is permitted to designate areas in which ADUs may be developed. However, the City has not adequately demonstrated the impact that ADUs will have on public safety so as to justify prohibiting ADUs without two means of vehicular access and requiring a CUP for all ADUs in the VHFHSZ, which covers virtually the entire city, potentially prohibiting or delaying ADU construction in large swaths of the city.¹

To be clear, HCD does not take issue with the existence of the VHFHSZ itself, as suggested by the City in its June 18, 2021, letter. Rather, HCD is concerned about added requirements that may effectively prohibit ADU development in the majority of the city, especially given the lack of evidence that these restrictions are needed or will fulfill their intended purpose.

Note that the VHFHSZ mapping was not intended to serve as a development moratorium. Rather, according to Cal Fire, these maps are intended to be used for planning purposes and mitigation measures, namely:

- Implementing wildland-urban interface building standards for new construction
- Natural hazard real estate disclosure at time of sale
- 100-foot defensible space clearance requirements around buildings
- Property development standards such as road widths, water supply and signage
- Consideration in city and county general plans²

Further, in consultation with the California Department of Forestry and Fire Protection, HCD has confirmed that ADU development in a VHFHSZ must conform with standards set forth in Chapter 7A of the California Building Code (CBC), Chapter 49 of the California Fire Code (CFC), and the Minimum Fire Safe Regulations in the Public Resources Code Section 429 (14 CCR 1270 et seq.). These codes establish and/or strengthen development standards that govern residential development within a VHFHSZ and Wildland-Urban Interface Fire Areas. Both CBC Chapter 7A and CFC Chapter 49 require compliance with the requirements for defensible space and building in wildfire prone areas of Government Code sections 51175-51189.

HCD observes that the City's General Plan Land Use, Housing, and Circulation Elements raise no concerns about housing in the VHFHSZ and propose no housing restrictions or access concerns with regard to fire safety. The City's Safety Element is

¹ City of Rancho Palos Verdes, Agenda Report, September 1, 2020 (Case No. PLCA2020-0001), p. 5.

² Office of the State Fire Marshal, Fire Hazard Severity Zones, available at <https://osfm.fire.ca.gov/divisions/community-wildfire-preparedness-and-mitigation/wildfire-preparedness/fire-hazard-severity-zones/>.

likewise silent. Furthermore, the City has placed no similar restrictions on the construction or expansion of any other residential structures in the VHFHSZ, such as single-family homes. Aside from the VHFHSZ maps, the City cites no evidence that its infrastructure is insufficient to handle ADUs or that two distinct means of vehicular access are necessary in every case where an ADU is added in a VHFHSZ. For instance, it appears that neither the Los Angeles County Fire Department nor Cal Fire recommended that ADUs be limited in this manner, despite the City's efforts to consult with them on access and restrictions.³ Finally, HCD is unaware of any traffic or other studies that indicate that the City's infrastructure is inadequate to support the development of ADUs in the VHFHSZ or that evacuation would be impacted by ADUs in any material way.

In addition, on page 7 of its June 18, 2021, letter, the City states, "Development of ADUs and JADUs will have cumulative impacts over time if most homes in a community add on one ADU that exceeds lot coverage and one JADU and eliminate all off-street parking." However, the City provides no evidence to support its assumption that "most" homes will do these things. The City goes on to state, "As the ADUs, housing density, and population increase (potentially more than doubling the population), neighborhoods will become even more congested with vehicles parked on both sides of the streets." Again, the City provides no evidence to support its assumption that the city will experience such a significant population increase as a result of ADU construction.

In sum, the City can limit where ADUs may be located based on "the impact of accessory dwelling units on traffic flow and public safety." (Gov. Code § 65852.2, subd. (a)(1)(A).) The City cited fire safety as the purported basis for the restrictions set forth in Municipal Code section 17.10.020.C, but the City does not provide adequate supporting documentation to demonstrate that ADUs in these areas would in fact impact public safety, or that adopting these expansive restrictions would mitigate these potential issues. For these reasons, as currently applied, Municipal Code section 17.10.020.C violates Government Code section 65852.2, subdivision (a). To bring its ADU ordinance into compliance, the City must either remove these restrictions or provide additional evidence that demonstrates that ADUs would impact public safety if allowed to be built in the VHFHSZ without going through the CUP process.

The City must remove the prohibition and CUP requirement for subdivision (e) ADUs

Even if the City could justify such a "public safety" restriction on ADUs under Government Code section 65852.2, subdivision (a), whereby a "local agency may, by ordinance, provide for the creation of accessory dwelling units," such a restriction is not available for ADUs that fall under subdivision (e). ADUs described in subdivision (e) fall into four categories, and ADUs within those four categories must be allowed in *any* residential or mixed-use zone and are not subject to any local development standards other than those specifically listed in subdivision (e). These ADUs tend to be smaller,

³ City of Rancho Palos Verdes, Agenda Report, September 1, 2020 (Case No. PLCA2020-0001), p. 6.

may be within an existing structure, and may have to meet other specified criteria such as minimum setback requirements.

The City must make other amendments to bring its ADU ordinance into compliance with State ADU Law

As noted above, the City must either amend the Ordinance or adopt findings to justify additional requirements related to ADUs developed in the VHFHSZ under the provisions of Government Code section 65852.2, subdivision (a). It must also amend its ordinance to ensure that ADUs meeting the requirements of an ADU found in Government Code section 65852.2, subdivision (e), are exempt from these and any other additional local development standards.

In addition, with respect to the following concerns identified in HCD's May 21, 2021, letter, the City appeared to concede in its June 18, 2021, letter that the City's ordinance is inconsistent with State ADU Law and agreed to explore potential amendments to its ordinance:

- "Section 17.10.020 should be revised to clarify that an ADU 'within an existing space' may be a unit that is located within a proposed or existing primary dwelling." (City of Rancho Palos Verdes letter to HCD, dated June 18, 2021 (City Letter), p. 4, quoting HCD and indicating a textual revision will be explored.)
- "Section 17.10.20.B should be revised to make clear that ADUs are allowed on all lots with a proposed or existing single family or multifamily structure, and that [Junior Accessory Dwelling Units (JADUs)] are allowed only where there is a proposed or existing single-family unit on the lot. Section 17.10.040.E.3 should also be revised to make clear that JADUs are only allowed in a proposed or existing single-family dwelling." (City Letter, p. 4, quoting HCD and indicating a textual revision will be explored.)
- "The language in Section 17.10.030.A requiring JADUs to comply with ADU standards 'in addition' to JADU standards should also be removed, as it is overly broad and confusing." (City Letter, p. 4, quoting HCD and indicating a textual revision will be explored.)
- "... parking for ADUs may be provided as tandem parking spots or in a driveway. There can be no 'required garage space' as stated in Section 17.10.20.B.4." (City Letter, pp. 4-5, quoting HCD and indicating a textual revision will be explored.)
- "Section 17.10.20.B.6.c and e should be revised to include the phrase 'where feasible' at the beginning of the first sentence JADUs are exempt from local design and development standards, and thus these privacy standards would not apply to JADUs under any condition." The 'lighting requirements' under Section 17.10.020.B.6.g should also be elucidated and required only 'where feasible'." (City Letter, p. 5, quoting HCD and indicating a textual revision will be explored.)

- “State Fair Housing Law prevents local jurisdictions from limiting the number of bedrooms in a residence.... Section 17.10.020.B.8 therefore needs to be removed.” (City Letter, p. 6, quoting HCD and indicating a textual revision will be explored.)
- “Section 17.10.020.B.14 of this ordinance will need to be revised to require 4-foot rear and side yard setbacks instead of five (5)-foot side and rear yard setbacks. Section 17.10.020.C.4 should be revised in the same manner.” (City Letter, p. 6, quoting HCD and indicating a textual revision will be explored.) Please note that any “mitigation measures” in VHFHSZs would still have to comply with State ADU Law. This essentially means that no additional fire safety standards can be required of a new ADU that would not be required for a primary dwelling being built on the site. In other words, ADU development must not be limited any more than any other type of residential development.
- “Section 17.10.020.D.3 of this ordinance [pertaining to replacement parking provisions] should thus be removed. The same is true for 17.10.020.C.5.” (City Letter, p. 8, quoting HCD and indicating a textual revision will be explored.)
- “JADUs can be created in an attached garage. This should be elucidated in Section 17.10.030.A.4 of this ordinance.” (City Letter, p. 8, quoting HCD and indicating a textual revision will be explored.)

Additionally, HCD requests further information on Section 17.10.050.A.3 related to revocation of ADU Permits. (City Letter, p. 9.)

Conclusion

Given the deficiencies described above and in HCD's May 21, 2021, letter, the City's ADU ordinance is inconsistent with State ADU Law. HCD hopes that the City finds the additional technical assistance provided in this letter useful and looks forward to receiving the City's plan of action to bring its ordinance into compliance pursuant to Government Code section 65852.2, subdivision (h)(2)(B), by September 28, 2022.

Should the City decide not to take steps to modify its ordinance in the manner outlined in this letter, it should be aware of the impacts that would flow from an ADU ordinance that does not comply with State ADU Law.

First, 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.” Pursuant to Government Code section 65852.2, subdivision (h)(1), HCD previously issued its findings as to whether the ADU ordinance complies with State ADU Law. If HCD finds the City fails to meet the requirements of Government Code section 65852.2, subdivision (h)(2)(B), the City should consider its ordinance null

and void from the date HCD issues its formal notice of violation pursuant to Government Code section 65852.2, subdivision (h)(3)(A) until such time as HCD finds the City has adopted an ordinance that complies with this section.

Second, Government Code section 65852.2, subdivision (h)(3)(A), authorizes HCD to notify the California Office of the Attorney General that the City is in violation of this state law. As noted above, HCD will not take action authorized pursuant to subdivision (h) before allowing the City an opportunity to respond to this letter and attempt to revise its ordinance to bring it into compliance.

Third, the City would not be able to rely on ADUs to meet its Regional Housing Needs Allocation (RHNA). The City has been assigned a RHNA from the Southern California Association of Governments in the amount of 638 units, of which 253 must be affordable to very low-income households, 139 to low-income households, 125 to moderate-income households, and 122 to above moderate-income households. Pursuant to the adopted housing element received for HCD review on August 15, 2022, the City is projecting construction of 40 ADUs to meet its RHNA. Government Code section 65852.2, subdivision (m), allows a city to rely on the potential for ADUs in its housing element site analysis only where the local ordinance complies with this section *and* is authorized by HCD. Thus, until the City has a compliant ADU ordinance, it must look elsewhere for appropriate sites to meet its RHNA.

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 Reid Miller, of our staff, at Reid.Miller@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