

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

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April 4, 2024

Sheryl Brady, Community Development Director
Department of Planning
City of Palos Verdes Estates
340 Palos Verdes Dr. West
Palos Verdes Estates, CA 90274

Dear Sheryl Brady:

**RE: Review of Palos Verdes Estates' Accessory Dwelling Unit (ADU) Ordinance
under State ADU Law (Gov. Code, §§ 66313 - 66342)**

Please Note: As of March 25, 2024, with the Chaptering of Senate Bill (SB) 477 (Chapter 7, Statutes of 2024), the sections of Government Code relevant to State ADU and Junior Accessory Dwelling Unit (JADU) Laws have been re-numbered (Enclosure 1).

Thank you for submitting the City of Palos Verdes Estates' (City) ADU Ordinance No. O-760 (Ordinance), adopted June 27, 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 66326, subdivision (a). HCD finds that the Ordinance does not comply with State ADU and JADU Laws in the manner noted below. Under Government Code section 66326, subdivision (b)(1), 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 May 4, 2024.

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

1. Section 18.45.030 B. – '*Accessory Structure*' Definition – The City defines 'accessory structure' as: "a structure that is physically detached from and accessory, subordinate and incidental to the principal building or dwelling located on the same lot." However, structures need not be physically detached from the principal dwelling or subordinate and incidental to the principal dwelling to be considered an accessory structure.¹ Therefore, the City must amend its Ordinance to remove these requirements from its definition of 'accessory structure'.

¹ Gov. Code, § 66313, subd. (b)

2. Section 18.45.030 H. – *“Living Area” Definition* – The Ordinance defines “living area” as “... the interior habitable area of a dwelling unit, including basements and attics, but does not include any accessory structure.” However, garages are also exempt from living area calculations.² Therefore, the City should modify its Ordinance to clarify this condition.

3. Section 18.45.040 A. – ADU Allowance – The Ordinance states that “If an ADU or JADU complies with each of the general requirements in PVEMC 18.45.050, it is allowed with only a duly-issued building permit in the following scenarios...”. This description suggests that prospective ADU builders may only construct ADUs pursuant to PVEMC sections 18.45.040 A.1. or A.2., not both (same with PVEMC sections 18.45.040 A.3. or A.4.). However, Government Code section 66323, subdivision (a) states, “Notwithstanding Sections 66314 to 66322, inclusive, a local agency shall ministerially approve an application...to create any of the following: (1) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling...(A) 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.” Additionally, subparagraph (a)(2) permits “One 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 ministerial ADU types indicates that any of these ADU types can be combined on lots with existing or proposed single-family dwellings. The statute does not use “or” or “one of” to indicate only one or another would be applicable to the exclusion of the other.

Therefore, if the local agency approves an ADU that is created from existing (or proposed) space of a single-family dwelling, or created from an existing accessory structure, and the owner subsequently applies for a detached ADU permit (or vice versa), which meets the size and setback requirements, pursuant to the subdivision, the local agency cannot deny a permit for a ADU under this section. This allows a homeowner, who meets specified requirements, to create one (1) converted ADU, one (1) detached, new construction ADU, and one (1) JADU, in any order without prejudice, totaling three units. (Emphasis Added). This standard also applies to ADUs created pursuant to Government Code section 66323, subdivisions (a)(3)(A) and (a)(4)(A), on lots with proposed or existing multifamily dwellings that fulfill the other requirements of that section. Therefore, the City must amend its Ordinance to clarify the correct allotment for ADUs.

4. Section 18.45.040 A.2.c.; 18.45.040 4.b.; 18.45.050 B.5. – *Detached ADU Height* – The Ordinance requires that, for detached ADUs, “The highest point of the ADU and JADU does not exceed the applicable height limit in PVEMC 18.45.050 B.” However, section 202 of the California Building Code (CBC) defines “Height,

² Gov. Code, § 66313, subd. (e)

Building” as “the vertical distance from grade plane to the **average height** of the highest roof surface” not the distance to the single highest point of the ADU or JADU.(Emphasis Added). Therefore, the City must amend the Ordinance to measure building height consistent with the CBC’s definition.

5. Section 18.45.040 C.3. – *Process and Timing* - The Ordinance states that: “The applicant shall provide a copy of the application to the Palos Verdes Homes Association within five days of submittal to the city.” While this finding does not present a violation of State ADU Law, HCD reminds the City that no other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit.³ Additionally, no discretion or third-party intervention is allowed in the ministerial process; only permitting agencies have the authority to approve or deny ADU applications.⁴ Therefore, the City should consider omitting this requirements. However, if the City keeps this language, HCD strongly recommends adding the language contained within Section 18.45.060.I.11.b. to clarify the ministerial nature of ADU approvals.
6. Section 18.45.050 A.1. – *Zoning* – The Ordinance states that: “An ADU or JADU subject only to a building permit under PVEMC 18.45.040 A. may be created on a lot in a residential or mixed-use zone.” However, rather than only allow ADUs in zoned **only** for residential or mixed-use, state law provides for the creation of accessory dwelling units in **any areas zoned to allow single-family or multifamily dwelling residential** (emphasis added) use.⁵ Therefore, the City must amend its Ordinance to align with the zoning requirements imposed by state statute.
7. Section 18.45.050 D. – *Rental Term* – The Ordinance states that: “No... JADU may be rented for a term that is shorter than thirty days.” While by-right ADUs may be prohibited from being rented for a term of 30 days or less, there are no equivalent provision limiting JADU rental terms to 30 days or less. Therefore, the City must amend its Ordinance to remove the rental term restriction on JADUs.
8. Section 18.45.050 D. – *Business License Required* - The Ordinance states that: “No person shall rent an ADU or JADU without first obtaining and thereafter maintaining a business license.” HCD requests further information about this provision. Please provide a citation for business license requirements for landlords, and please clarify whether business licenses are required for all landlords or only those who oversee ADUs.
9. Section 18.45.050 G.1; 18.45.050 G.2 – *Owner Occupancy* – The Ordinance requires that any ADU applicant on or after January 1, 2025, is an owner occupant.

³ Gov. Code, § 66317, subd. (c)

⁴ Gov. Code, § 66317, subd. (a)

⁵ Gov. Code, § 66314

However, no additional standards, other than those provided in Government Code sections 66314 to 66322 shall be used or imposed on ADUs, including an owner-occupancy requirement.⁶ The City may not impose any owner-occupancy requirement on ADUs. Therefore, the City must amend its Ordinance to remove ADU owner occupancy requirements.

10. Section 18.45.050 H.1 – *Deed Restriction* - The Ordinance states that: "Except as otherwise provided in Government Code section 65852.26, the ADU or JADU may not be sold separately from the primary dwelling." While this policy conforms with State ADU Law, local agencies may also adopt a local ordinance to allow the separate conveyance of the primary dwelling unit and accessory dwelling unit or units as condominiums.⁷ Therefore, the City should consider amending its ordinance to allow for such conveyance and should correct the referenced code section as this has been changed with the chaptering of SB477.
11. Section 18.45.050 H.4. – *Deed Restriction* – The Ordinance states that, regarding removal of deed restriction requirements: "The Community Development Director may... determine whether the evidence supports the claim that the ADU or JADU has been eliminated." However, jurisdictions are only permitted to impose objective standards on ADUs 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.⁸ According to these definitions, the City's standard for determining whether an ADU or JADU has been eliminated does not appear objective. Therefore, the City must amend its Ordinance to include an objective standard for this process.
12. Section 18.45.050 J.1. – *Building and Safety* – The Ordinance states, "All ADUs and JADUs must comply with all local building code requirements." However, ADUs can only be subjected to local building code requirements that apply to detached dwellings, not "all local building requirements".⁹ Additionally, ADUs and JADUs need only comply with local building requirements that are objective and do not conflict with State ADU Law.¹⁰ The City must amend its Ordinance to reflect these limitations.
13. Section 18.45.060 B.4. – *Setbacks* – The Ordinance states, "If the front yard setback is the only location on the lot where an ADU may be lawfully constructed, then the ADU may encroach into the required front yard setback as necessary to enable the construction of an eight hundred square foot unit." While this provision

⁶ Gov. Code, § 66315

⁷ Gov. Code, § 66342

⁸ Gov. Code, § 66313 subd. (h), § 66314, subd. (b)(1)

⁹ Gov. Code, § 66314, subd. (d)(8)

¹⁰ Gov. Code, § 66314, subd. (b)(1)

generally conforms with Government Code section 66321, subdivision (b)(3), it is unclear how this exception would be applied ministerially according to Government Code section 66320, subdivision (a), which prohibits a local agency from performing a discretionary review of an application to permit an ADU. While jurisdictions can impose front setbacks, they cannot preclude an ADU of at least 800 square feet from existing in the front setback, regardless of whether such an ADU could exist somewhere else on the lot. Therefore, the City must amend its Ordinance to clarify that front setback requirements cannot preclude an ADU of at least 800 square feet from existing in the front setback, regardless of whether such an ADU could exist somewhere else on the lot.

14. Section 18.45.060 I.1; Section 18.45.060 I.2.; Section 18.45.060 I.6. – *Design Standards* – The Ordinance requires that: “Windows and doors of the ADU may not have a direct line of sight to an adjoining residential property.” However, design standards on ADUs must be objective according to Government Code section 66314, subdivision (b)(1). Any potentially subjective terms such as “Direct line of sight” or “match” must be clarified as objective standards per Government Code section 66313 subdivision (h), which prohibits any subjective term that fails to provide a design standard that involves no personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark. Therefore, the City should amend its Ordinance to include only objective design standards.

15. Section 18.45.060 I.4. – *Entrance Location* – The Ordinance states that ADU entrances: “... must be located on the side or rear building façade, not facing a public right of way.” While state law requires that ADUs and JADUs have an independent entry into the unit, a constraint on the location of an entry door may make the creation of an additional housing unit infeasible.¹¹ Therefore, the City should consider amending its Ordinance considering these provisions, to add “whenever feasible”.

In response to the findings in this letter, and pursuant to Government Code section 66326, subdivision (b)(2)(A) and (b)(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.

¹¹ Gov. Code § 66323, subd. (a)(1)(B)

Sheryl Brady, Community Development Director

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Please note that, pursuant to Government Code section 66326, subdivision (c)(1), 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 feel free to contact Nick Green, of our staff, at (916) 841-6665 or at Nicholas.Green@hcd.ca.gov.

Sincerely,



Jamie Candelaria
Senior Housing Accountability Manager
Housing Policy Development Division

New Government Code Sections	Previous Government Code Sections
Article 1. General Provisions	
66310	65852.150 (a)
66311	65852.150 (b)
66312	65852.150 (c)
66313	General Definition Section 65852.2 (j) 65852.22 (j)
Article 2. Accessory Dwelling Unit Approvals	
66314	65852.2(a)(1)(A), (D)(i)-(xii), (a)(4)-(5)
66315	65852.2 (a)(8)
66316	65852.2 (a)(6)
66317	65852.2 (a)(3) (a)(7)
66318	65852.2 (a)(9) 65852.2 (a)(2)
66319	65852.2 (a)(10)
66320	65852.2 (b)
66321	65852.2 (c)
66322	65852.2 (d)
66323	65852.2 (e)
66324	65852.2 (f)
66325	65852.2 (g)
66326	65852.2 (h)
66327	65852.2 (i)
66328	65852.2 (k)
66329	65852.2 (l)
66330	65852.2 (m)
66331	65852.2 (n)
66332	65852.23.
Article 3. Junior Accessory Dwelling Units	
66333	65852.22 (a)
66334	65852.22 (b)
66335	65852.22 (c)
66336	65852.22 (d)
66337	65852.22 (e)
66338	65852.22 (f)-(g)
66339	65852.22 (h)
Article 4. Accessory Dwelling Unit Sales	
66340	65852.26 (b)
66341	65852.26 (a)
66342	65852.2 (a)(10) – Condominiums