

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

651 Bannan Street, Suite 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



September 25, 2024

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, §§ 66310 - 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) Law have been re-numbered (Enclosure 1).

Thank you for submitting the City of Port Hueneme (City) ADU Ordinance No. 798 (Ordinance), adopted June 3, 2024, 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 fails to comply with State ADU and JADU Laws in the manner noted below. Under 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 October 25, 2024.

Previously, HCD reviewed Ordinance No. 791, and on March 13, 2023, HCD sent the City a letter regarding that ordinance with findings of noncompliance with State ADU Law. Though the City has adopted a revised ordinance (No. 798), some of the findings HCD made regarding the previous ordinance (No. 791) were not addressed, including front setbacks, height limitations, unit allowances, parking exceptions, owner occupancy, and deed restrictions and affordability covenants. While Ordinance No. 798 addresses many statutory requirements, HCD finds that the Ordinance fails to comply with State ADU Law as follows:

1. *Statutory Numbering* - The Ordinance contains several references to code sections that were deleted by SB 477, effective March 25, 2024. These include Government Code sections 65852.2, 65852.22 and 65852.26. The contents of these sections were relocated to Government Code, Title 7, Division 1, Chapter

13 (sections 66310-66342, see Enclosure). The City must amend the Ordinance to refer to the correct code sections.

2. Section 10802 B.1 – *Citation* – The Ordinance reads, “An Accessory Dwelling Unit or ADU (also known as "secondary dwelling unit" or "granny flat") will have the meaning set forth in Government Code Section 63313(a)....” This mis-cites Government Code section 66313 as “63313”. The City must amend the Ordinance for accuracy.
3. Section 10802 B.5 – *JADU and Garages* – The Ordinance defines JADU as, “...a unit that is no more than 500 square feet in size and contained entirely within an existing primary residence.” However, Government Code section 66333, subdivision (d), states that local JADU ordinances must “[r]equire a permitted junior accessory dwelling unit to be constructed within the walls of the proposed or existing single-family residence. For purposes of this subdivision, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” Therefore, omission of reference to attached garages as being permissible for JADUs is inconsistent with State JADU Law. The City must amend the Ordinance accordingly.
4. Section 10802 B.8 – *“Primary” Definition* – The Ordinance states, “A primary housing unit (or "primary dwelling unit") means any **single-family residence** proposed or existing on the lot where an ADU would be located.” However, Government Code section 66314, subdivision (d)(2), requires that the lot proposed for ADU development “is zoned to allow single-family or multifamily dwelling residential use and includes **a proposed or existing dwelling**.” The term “primary dwelling” refers to both single family and multifamily primary dwellings. The City must amend the Ordinance to comply with State ADU Law.
5. Section 10802 B.11 – *“Exemption” Unit and Height* – The Ordinance states, “A statewide exemption ADU means an ADU of up to 800 square feet in area, 18 feet in height, *as potentially limited by a local agency*....” However, the Ordinance does not describe by what means an ADU’s height or size may be “potentially limited”. Government Code section 66323 does not permit local agencies’ discretionary limitation of height or size in subject units. Therefore, the City must remove the statement “as potentially limited by a local agency” to comply with State ADU Law.
6. Section 10802 B.11 – *Front Setbacks* – The Ordinance states, “ADU law requires that no lot coverage, floor area ratio, open space, or minimum lot size will preclude the construction of a statewide exemption ADU.” This appears to be a reference to Government Code section 66321, subdivision (b)(3). However, that section states, “Any requirement for a zoning clearance or separate zoning

review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, **front setbacks**, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” Therefore, the omission of reference to front setbacks is inconsistent with State ADU Law. The City must amend the Ordinance accordingly.

7. Section 10802 B.11 – *Unit Allowance* – The Ordinance states, “ADU law allows the construction of a detached new construction statewide exemption ADU to be combined on the same lot with a JADU in a single-family residential zone.”

While section D.6 uses the exact language from State ADU Law to discuss unit allowances required by Government Code section 66323, conversations with and letters from City staff do not indicate that staff have understood State ADU Law requires the ministerial approval of all units subject to Government Code section 66323. The statement in section B.11 could be interpreted as permitting only one ADU with one JADU on a lot with a single-family primary dwelling, which would be more restrictive than State Law.

Additionally, the Ordinance further restricts ADUs/JADU to “single family residential zones”. However, Government Code section 66333, subdivision (a), allows “one [JADU] per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.” This section is inconsistent with State ADU Law and must be amended accordingly.

8. Section 10802 D.9. – *Entry Conditions and Subjective Term* – The Ordinance states, “The entrance of accessory dwelling unit cannot face the front property line or must otherwise be oriented so as to be clearly subordinate to the primary entrance....” Local development standards may not preclude the ministerial approval of any ADU subject to Government Code section 66323. Additionally, Government Code section 66314, subdivision (b)(1), allows only “objective standards”, which are defined in section 66313, subdivision (h), as “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.” The term “clearly subordinate” is subjective and violates State ADU Law. Therefore, the City must remove this section.
9. Section 10802 D.11.c – *Parking Exceptions* – The Ordinance provides exceptions to parking requirements that are partially consistent with Government

Code section 66322, but omits reference to the important condition of (a)(6): “A local agency shall not impose any parking standards for an accessory dwelling unit in any of the following instances: When a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit or the parcel satisfies any other criteria listed in this subdivision.” Therefore, the City must amend the Ordinance to comply with State ADU Law.

10. Section 10802 D.12 – *Separate Sale* – The Ordinance states, “Except as provided in Government Code Section 66323(a)(1), the ADU may be rented separately from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.” Government Code section 66341 requires local jurisdictions to provide for separate sale under specified conditions. The City must amend the Ordinance to comply with State ADU Law.
11. Section 10802 D.12 – *Owner Occupancy* – The Ordinance states, “Effective January 1, 2025, either the primary housing unit or accessory dwelling unit shall be occupied by the property owner, unless this date is otherwise subsequently modified by state statute.” Government Code section 66315 states “Section 66314 establishes the maximum standards that a local agency 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 Section 66314, shall be used or imposed, **including an owner-occupant requirement**, except that a local agency may require that the property may be used for rentals of terms 30 days or longer.” Therefore, the City must amend the Ordinance to comply with State ADU Law.
12. Section 10802 E.7 – *Garage Conversions and JADUs* – The Ordinance states, “Additional parking shall not be required for a JADU that conforms with the provisions of this Section, with the exception that if the JADU is constructed within an attached garage, the parking spaces required for the primary residence that were displaced by construction of the JADU shall be replaced on the site.” Government Code section 66334 states “A junior accessory dwelling unit ordinance adopted pursuant to Section 66333 shall not require additional parking as a condition to grant a permit.” Therefore, the City’s requirement of replacement parking violates State ADU Law. The City must amend the Ordinance accordingly.
13. Section 10802 F – *Deed Restriction and Affordability Covenant* – The Ordinance requires a deed restriction and affordability covenant. Government Code section 66315 states, “Section 66314 establishes the maximum standards that a local agency 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 Section 66314, shall be used or imposed, including an owner-occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer.” Therefore, the City’s requirements violate State ADU Law. The City must amend the Ordinance to achieve compliance.

The City has two options in response to this letter. The City can either amend the Ordinance to comply with State ADU Law or adopt the Ordinance without changes and include findings in its resolution adopting the Ordinance that explain the reasons the City believes that the Ordinance complies with State ADU Law despite HCD’s findings. If the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD must notify the City and may notify 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 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 cursive script that reads "Jamie Candelaria".

Jamie Candelaria
Senior Housing Accountability Manager
Housing Policy Development Division

State ADU/JADU Law Statutory Conversion Table

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)