

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

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July 9, 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: City of Port Hueneme Non-Compliant Ordinance Under State Accessory Dwelling Unit (ADU) Law – Notice of Violation

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).

The California Department of Housing and Community Development (HCD) is aware that the City of Port Hueneme (City) has not amended ADU Ordinance No. 791. HCD hereby notifies the City that its failure to either adopt an amended ordinance that complies with State ADU Law or adopt the Ordinance without changes and include findings explaining why the City believes the Ordinance complies with the law is unlawful under Government Code section 66326, subdivision (b)(2). In addition, the City's failure to utilize State ADU Law in place of its non-compliant ordinance is a violation of Government Code sections 66325 and 66316.

Background

HCD issued a review of Port Hueneme's ADU Ordinance on March 13, 2023. The Port Hueneme City Attorney's office replied on June 13, 2023 to accept some of HCD's findings while rejecting and rebutting other findings. HCD responded on January 24, 2024, addressing each point of rebuttal in the City's response. City staff requested a meeting with HCD staff on February 28, 2024. During the meeting, City staff presented arguments to support the City's position.

Analysis

HCD does not find the City's responses in the June 13, 2023, letter and in the meeting on February 28, 2024, to be persuasive. HCD reaffirms the findings provided in the March 13, 2023, and January 24, 2024, letters. The City made no attempts to remedy

the findings in question, particularly the “ADU Limitation” and “Affordability Covenant” findings that were present in both of HCD’s letters and were a main point of contention in the February 28, 2024, meeting.

Pursuant to Government Code section 66326, subdivision (b)(2), after considering HCD’s findings, a local agency shall either amend its ordinance pursuant to HCD’s findings or adopt a non-compliant ordinance without changes. If the City chooses the latter option, the City must include findings via a resolution that explain why the ordinance complies with State ADU Law despite HCD’s findings.¹ Any final amendment or resolution regarding the City’s ADU Ordinance must address *all* of HCD’s findings related to the City’s failure to comply with State ADU Law. Any amendment or resolution that does not address the entirety of HCD’s findings does not fulfill the requirements of Government Code section 66326, subdivision (b)(2).

The City has neither amended its Ordinance nor adopted the non-compliant Ordinance with findings in a resolution to adequately support why it believes it is compliant with State ADU Law, in violation of Government Code section 66326, subdivision (b)(2). Accordingly, pursuant to section 66326, subdivision (c)(1), HCD is notifying the City that it “is in violation of state law.”

Additionally, because the City has not addressed the deficiencies in its ordinance that HCD identified, the City’s ordinance conflicts with state law. The City must therefore utilize State ADU Law when processing ADU applications pursuant to Government Code section 66325, which states, “Except as provided in subdivision (b), this article shall supersede a conflicting local ordinance.” Additionally, in accordance with Government Code section 66316, “If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this article, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this article for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this article.”

Since the February 28, 2024, meeting, HCD has received multiple complaints through the ADU Technical Assistance Portal from Port Hueneme residents who claim that the City continues to act inconsistently with State ADU Law in ways that are relevant to HCD’s findings. In other words, the City continues to apply provisions of its Ordinance that do not comply with State ADU Law. As a result, the City is in violation of Government Code sections 66325 and 66316.

¹ Gov. Code, § 66326, subd. (b)(2).

Conclusion and Next Steps

HCD finds that the City has failed to amend Ordinance No. 5997 to comply with Government Code sections 66310-66342 or adopt the Ordinance without changes with findings via a resolution explaining why the Ordinance complies with these sections despite HCD's findings.² In addition, the City has demonstrated that it is not applying the standards in State ADU Law until it adopts an ordinance that complies with the law.³ As a result, the City is in violation of State ADU Law.

As a reminder, HCD has enforcement authority over State ADU Law.⁴ If HCD finds that a city's actions do not comply with State ADU Law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law.⁵ The City has 30 days to respond to this Notice of Violation and must provide a written response and plan of action to remedy the violations of State ADU Law no later than August 9, 2024. HCD will consider this response before taking further action authorized by state law, including referral to the California Office of the Attorney General.

If you have any questions or would like to discuss the contents of this letter., please contact Mike Van Gorder at Mike.VanGorder@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal stroke extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

Enclosure – State ADU/JADU Law Statutory Conversion Table

² Ibid.

³ Gov. Code, §§ 66325, 66316.

⁴ Gov. Code, §§ 65585, subd. (j)(15); 66326.

⁵ Gov. Code, §§ 65585, subd. (j); 66326, subd. (c)(1).

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)