

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

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June 15, 2023

Jill Mercurio, Acting Department Director  
Department of Planning and Zoning  
City of San Pablo  
13831 San Pablo Avenue  
San Pablo, CA 94806

Dear Jill Mercurio:

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

Thank you for submitting the City of San Pablo (City) accessory dwelling unit (ADU) Ordinance No. 2020-011 (Ordinance), adopted December 7, 2020, 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 July 14, 2023.

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

- 17.60.070 (D) – *Proposed Primary* – The Ordinance allows for ministerial approval of ADU applications "...if there is an existing single-family or multifamily dwelling on the lot." However, Government Code section 65852.2, subdivision (a)(1)(D)(ii), provides that ADUs are created in a "...lot zoned to allow single-family or multifamily dwelling residential use and includes a *proposed* or existing dwelling." Therefore, the City must amend the Ordinance to add "existing or proposed single-family..." to comply with statute.
- 17.60.070 (D)(1)(c)(iii), (D)(1)(e)(iii), (D)(1)(e)(v) – *Height* – The Ordinance makes numerous references to height maximums of 16 feet. However, Government Code section 65852.2, subdivision (c)(2)(D), sets the maximum at 16, 18, 20 or 25 based on the applicable provisions therein. The City should review changes to ADU law and must amend the Ordinance accordingly.

- 17.60.070 (E)(1) – *Unit Mixture* – The Ordinance permits “Up to one Accessory Dwelling Unit (ADU) and one Junior Accessory Dwelling Unit (JADU)...” on compliant lots. However, Government Code section 65852.2, subdivision (e)(1), states “Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application...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 subpart (B) 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 by right ADU types permitted indicate that any of these ADU types can be combined on a lot zoned for single family dwellings. Statute does not use ‘or’ nor “one of” to indicate only one or another would be applicable to the exclusion of the other.

Thus, 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 the applicant, nor deny a permit for a JADU under this section. This permits 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. This standard also applies to ADUs created pursuant to Government Code section 65852.2, subdivision (e)(1)(C) and (D), on lots with proposed or existing multifamily dwellings according to specified requirements. The City must note the exceptions and amend the Ordinance to comply with State ADU Law.

- 17.60.070 (F)(2)(d) – *Height Exception* – The Ordinance states that building separation and front yard requirements “shall not prevent the development of an ADU that is 800 feet or less, up to 16 feet in height, with at least four-foot side and rear yard setbacks.” However, the restriction to sixteen feet in height for such units may violate Government Code section 65852.2, subdivision (c)(2)(D), which sets height maximums no lower than 16, 18, or 25 feet in height based on specified criteria. The City must amend the Ordinance to reflect current statute.
- 17.60.070 (F)(3)(c) – *Parking* – The Ordinance lists a number of conditions for which no additional off-street parking is required. However, it omits mention of an instance where parking requirements may not be imposed as described in Government Code section 65852.2, subdivision (d)(1)(D): “When on street parking permits are required but not offered to the occupant of the accessory dwelling unit.” Please advise HCD if there are areas in the City

where parking permits are required; if so, the City must add this language to the Ordinance.

- 17.60.070 (F)(6) – *Subordinate Entry* – The Ordinance states “The independent exterior access must be located on the building side or building rear; or not visible from the street; or otherwise visually subordinate to the primary dwelling unit.” However, since state law requires that ADUs and JADUs have an independent entry into the unit (Gov. Code § 65852.2, subd. (e)(1)(a)(ii) and Gov. Code § 65852.22, subd. (a)(5)), a constraint on the location of an entry door may make the creation of an additional housing unit infeasible. 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), and the restrictions as implied would not be permissible. Therefore, the City should remove the section or revise it to apply on when there is no feasible alternative.

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 assisting 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](mailto: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