

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

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December 22, 2021

Jordan Davis
Director of Community and Economic Development
City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565

Dear Jordan Davis:

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

Thank you for submitting the City of Pittsburg (City) accessory dwelling unit (ADU) ordinance (Ordinance No. 20-1476) adopted July 20, 2020 to the California Department of Housing and Community Development (HCD). The ordinance was received on August 20, 2020. HCD has reviewed the ordinance and is submitting these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD has determined that the ordinance does not comply with section 65852.2 in the manner noted below. Under the 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 January 22, 2022.

The adopted ADU ordinance addresses many statutory requirements; however, HCD finds that the ordinance does not comply with ADU law in the following respects:

- 18.50.310 (E) - *Administrative Review* – The Ordinance adds a condition in its ministerial review of ADU and junior accessory dwelling unit (JADU) applications that “public and utility services including emergency access are adequate to serve both dwellings.” Government Code section 65852.2 (a)(1)(A) stipulates that the City may designate areas where ADUs may be permitted based on the adequacy of water and sewer services, as well as the impact to traffic flow and public safety. HCD interprets the term “Emergency Access”, as it applies to individual projects subject to ministerial approval, as a measure of the movement of emergency crews between and around buildings. Therefore, the City may consider these conditions when designating areas where ADUs may be built, but such conditions are not applicable to the ministerial approval of ADU applications. The City should clarify the language and remove the stipulation about emergency access.

- 18.50.315 - *Design and Development Standards* – The Ordinance provides a table of ADU and JADU development regulations. The top row of the table for the “Number of Units” indicates how many units are allowed on a lot but does not indicate the permissible combination of units within a lot. Government Code section 65852.2 (e)(1)(A) allows one ADU and one JADU with a proposed or existing single-family dwelling. The table implies that only one ADU or JADU is permissible in one single-family lot. Therefore, the City should clarify the language in its ordinance accordingly.
- 18.50.315 - *Maximum Unit Size* – The City states that the maximum size of attached ADUs may be the lesser of 50 percent of the primary dwelling floor area or 1,200 square feet. However, Government Code section 65852.2 (c)(2)(C) stipulates that the local agency may not establish by ordinance a size restriction based on percentage of the floor area of the primary structure that does not permit at least an 800 square-foot ADU. The City should revise the table to include an allowance of at least an 800 square-foot ADU, regardless of the size of the existing primary dwelling.
- 18.50.315 - *Setbacks* – The Ordinance prohibits ADUs from being located in any portion of the front yard. Such a local design standard would be in violation of Government Code section 65852.2 (e). The City should remove this language.
- 18.50.315 - *Setbacks* – The City states that the “corner side yard setback may be increased as necessary to maintain a sight distance triangle formed by the intersecting street lines and a line joining points on these street lines at a distance of 30 feet from the intersection of these lines.” This could be construed as an excessive constraint under Government Code section 65852.150 if such a requirement is only required for ADUs and JADUs and not for the rest of the underlying building code. The City should remove this language from the ordinance.
- 18.50.315 - *Exterior Appearance/Unit Access* – The City requires that exterior entry for ADUs not be visible from the public right-of-way and that stairways necessary for ADUs not be located in the front of the primary dwelling. It further states that detached units “Convey the appearance of a single-family home”. However, Government Code section 65852.150 states that local jurisdictions must not create requirements that are so arbitrary, excessive, or burdensome as to unreasonably restrict the ability of homeowners to create ADUs. This attempt to subordinate ADUs to their primary dwellings is an impermissible restriction; the City cannot require screened (subordinated) entry or screened second story access. Furthermore, “Convey the appearance of a single-family home” is a subjective term. The City should remove all such subordinating and subjective language from the ordinance.

In these respects, revisions are necessary to comply with statute.

HCD will consider any written response to these findings, such as a revised ordinance or a detailed plan to bring the ordinance into compliance with state law by a date certain, before taking further action authorized pursuant to Government Code section 65852.2. Please note that HCD may notify the Attorney General's Office in the event that the City fails to take appropriate and timely action under section 65852.2, subdivision (h).

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 blue ink, appearing to read 'D. Zisser', with a long horizontal flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability