

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

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September 30, 2022

Timothy Rood, Community Development Director  
Community Development Department  
City of Hercules  
111 Civic Drive  
Hercules, CA 94547

Dear Timothy Rood:

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

Thank you for submitting the City of Hercules accessory dwelling unit (ADU) Ordinance No. 531 (Ordinance), adopted February 09, 2021, to the California Department of Housing and Community Development (HCD). The Ordinance was received on September 07, 2022. HCD has reviewed the Ordinance and submits this written finding 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 this finding. Accordingly, the City must provide a written response to these findings no later than October 30, 2022.

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

- Sec. 13-35.320 (5)(A)(1), (10)(A)(1) and (10)(A)(2) – *ADU and JADU building permissions* – The Ordinance states in multiple places, “Only one ADU Within Existing Space **or** one JADU Within Existing Space is allowed per lot....” This reflects outdated language. Currently, Government Code section 65852.2, subdivision (e)(1) requires that “...a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create... One accessory dwelling unit **and** one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling....” Therefore, the City must change such uses of the word “or” to “and”.

In response to the finding 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

Timothy Rood, Community Development Director

Page 2

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 of Hercules fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD may notify the City of Hercules and 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 feel free to contact Nick Green, of our staff, at (916) 841-6665 or at [Nicholas.Green@hcd.ca.gov](mailto:Nicholas.Green@hcd.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" written in a larger, more prominent script than the last name "West".

Shannan West  
Housing Accountability Unit Chief  
Housing Policy Development Division