

CITY OF
VENTURA
CITY ATTORNEY

October 29, 2013

Via E-Mail

Barbara Pedizwiatr
stylinbarbie@hotmail.com

Re: October 22, 2013 Email to City Council concerning the City's Second Unit Amnesty Program

Dear Ms. Pedizwiatr:

This letter responds to your email of October 22, 2013, in which you assert that the State of California does not mandate enforcement of the State Energy Code. This assertion is not correct for the reasons discussed below. State law requires that the City enforce the Energy Code. However, as discussed in more detail below, the Energy Code applies differently to second units based on whether they were permitted and inspected under previous state Codes, so in some cases upgrades may not be required to second units to comply with the Energy Code. The current Energy Code also provides flexibility in meeting its requirements.

Once adopted by the State of California, the state Building and Housing Codes, including the Energy Code, govern all construction in California.¹ The Housing and Building laws allow local agencies such as the City to make only limited modifications to the state Codes. **To make changes, the City must make express findings that the changes are reasonably necessary based local climatic, geological or topographical conditions.**² This is the only means whereby the City may "modify" the state Codes, as mentioned by the state Housing Programs Manager, or "legally override" state Codes, as stated by Mr. Kunz of Title 24 Express. The City has made local changes to a number of the state Codes in Division 12 of the San Buenaventura Municipal Code, but not the Energy Code.

State law requires that the City enforce the state Codes.³ The City's Building and Safety Division staff may exercise only limited discretion in this enforcement. They may permit the use of alternative methods or materials that meet or exceed the health and

¹ Cal. Health & Safety Code § 18938(b).

² Cal. Health & Safety Code §§ 17958.7 and 18941.5.

³ Cal. Health & Safety Code §§ 17960 and 18948.

Barbara Pedizwiatr

Re: October 22, 2013 Email to City Council concerning the City's
Second Unit Amnesty Program

October 29, 2013

Page 2

safety requirements of the Building and Residential Building Codes on a case by case basis.⁴ This is what the state Housing Programs Manager was referring to when he stated that the City has the flexibility to accept "alternate methods which are necessary to provide equivalent protections."

State law therefore requires the City's Building Official to enforce the state Energy Code. Enforcement differs depending on the type of construction being permitted. The Building Law states that the Building Code in effect at the time an application for a building permit is submitted is the Code that applies to the construction performed under that building permit.⁵ The Housing Law similarly specifies that its provisions, and the Building Code, apply to new residential construction.⁶ The Housing Law specifies that alterations and repairs to existing residential buildings are permitted to replace, retain and extend original materials and original methods of construction as long as the building does not become or continue to be a substandard building.⁷ In contrast, building additions or alterations that increase the area, volume, or size of an existing building must comply with the requirements for new buildings in the Building and Residential Codes.⁸

As a result, Compliance with California Code of Regulations, Title 24, Part 6 (State Energy Code) is required for all converted, altered or new conditioned space per Section 100.0 of Part 6 of State Title 24. In contrast, legally existing unaltered conditioned spaces that were permitted and inspected under previous Title 24 regulations are deemed compliant and need no further proof of energy compliance.

For purposes of illustrating this difference, a comparison of two situations is provided. For example, a 1970's patio cover that was converted in the 1990's without a permit to an enclosed conditioned space will be considered "converted" to conditioned space when they apply for permits and must demonstrate compliance with the current Energy Code. Conversely, a 1970's guest room that was initially legally permitted and inspected, but later converted to a studio unit without a permit in the 1990's, is not

⁴ Cal. Health & Safety Code § 17951 and California Building Code § 1.8.7 Alternate Materials, Designs, Tests and Methods of Construction.

⁵ Cal. Health & Safety Code § 18938.5.

⁶ Cal. Health & Safety Code § 17912 ("Rules and regulations promulgated pursuant to the provisions of this part and building standards published in the State Building Standards Code, relating to the erection or construction of buildings or structures, shall not apply to existing buildings or structures . . .").

⁷ Cal. Health & Safety Code §§ 17922(d).

⁸ *Id.*

Barbara Pedizwiatr

Re: October 22, 2013 Email to City Council concerning the City's
Second Unit Amnesty Program

October 29, 2013

Page 3

considered "converted" to conditioned space and need not demonstrate compliance with the current Energy Code.

Lastly, please note that the Energy Code provides flexibility in meeting its requirements. Compliance with the Energy Code can be achieved by either installing a prescribed amount of energy conserving building materials (insulation, windows, etc.) or by having an energy performance analysis showing energy compliance that is equivalent to the prescriptive compliance approach. The Energy Code forms provided in the current Second Dwelling Unit Amnesty Permit application packet may be used to document either of these methods of compliance, or can be used to document that no changes were made to conditioned space for which prior compliance was obtained.

Sincerely,



Keith Bauerle
Assistant City Attorney



Andrew Stuffer
Chief Building Official

KB:AS:as

cc: Mike Tracy, Mayor
City Council Members
Ariel Calonne, City Attorney
Mark Watkins, City Manager
Jeff Lambert, Community Development Director