



CalHDF comment re ADU ordinance fro 12/12/24 Planning Commission meeting

From James Lloyd <james@calhdf.org>

Date Thu 12/12/2024 2:02 PM

To mkeldorf@elsegundoccb.org <mkeldorf@elsegundoccb.org>; jhoeschler@elsegundoccb.org <jhoeschler@elsegundoccb.org>; kmaggay@elsegundoccb.org <kmaggay@elsegundoccb.org>; minga@elsegundoccb.org <minga@elsegundoccb.org>; mchristian@elsegundoccb.org <mchristian@elsegundoccb.org>

Cc VM CityManagersOffice <VMCityManagersOffice@elsegundo.org>; Planning <Planning@elsegundo.org>; *ALL CITY CLERKS <ALLCITYCLERKS@elsegundo.org>; Hensley, Mark <mhensley@hensleylawgroup.com>

1 attachment (254 KB)

El Segundo- ADU Ordinance Comment - 12 Dec 2024 - PC.pdf;

Dear El Segundo Planning Commission,

The California Housing Defense Fund ("CalHDF") submits the attached public comment regarding the proposed amendments to the City's accessory dwelling unit ("ADU") ordinance, which are calendared as agenda item B2 for the December 12, 2024 Planning Commission meeting.

Sincerely,

James M. Lloyd
Director of Planning and Investigations
California Housing Defense Fund
james@calhdf.org



Dec 12, 2024

City of El Segundo
350 Main Street
El Segundo, CA 90245

By Email: mkeldorf@elsegundoccb.org; jhoeschler@elsegundoccb.org;
kmaggay@elsegundoccb.org; minga@elsegundoccb.org; mchristian@elsegundoccb.org

CC: VMCityManagersOffice@elsegundo.org; planning@elsegundo.org;
allcityclerks@elsegundo.org; mhensley@hensleylawgroup.com

Re: Proposed Changes to the City's ADU Ordinance

Dear El Segundo Planning Commission,

The California Housing Defense Fund ("CalHDF") submits this letter regarding the proposed amendments to the City's accessory dwelling unit ("ADU") ordinance, which are calendared as agenda item B2 for the December 12, 2024 Planning Commission meeting.

CalHDF appreciates that the City is amending its ADU ordinance to keep pace with changes in state law. However, the proposed ordinance's requirements conflict with state law as discussed below.

Background

The law gives local governments authority to enact zoning ordinances that implement a variety of development standards on ADUs. (Gov. Code, § 66314.) The standards in these local ordinances are limited by state law so as not to overly restrict ADU development. (See *id.*) Separately from local ADU ordinances, Gov. Code, § 66323 prescribes a narrower set of ADU types for which it imposes a ministerial duty on cities to approve. "Notwithstanding Sections 66314 to 66322 ... a local agency shall ministerially approve" these types of ADUs. (*Id.* at subd. (a).) This means that ADUs that satisfy the minimal requirements of section 66323 must be approved regardless of any contrary provisions of the local ADU ordinance. (*Ibid.*)

SB 1211, effective 1 January 2025, makes this even more explicit: Gov. Code, § 66323, subdivision (b): "A local agency shall not impose any objective development or design standard that is not authorized by this section upon any accessory dwelling unit that meets

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hi@calhdf.org

the requirements of any of paragraphs (1) to (4), inclusive, of subdivision (a).”

In addition, ADUs that qualify for the protections of Gov. Code, § 66323, like other ADUs, must be processed by local governments within 60 days of a complete permit application submittal. (Gov. Code, § 66317, subd. (a).)

State law also prohibits creating regulations on ADU development not explicitly allowed by state law. Government Code Section 66315 states, “No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer.”

Impermissible Prohibition on Separate Sales

City code section 15-4E-2(D) bans all sales of ADUs separate from the primary dwelling. However, Government Code section 66341 establishes certain circumstances in which the local agency must allow separate sales of ADUs. The City should amend the proposed code to facilitate separate sales in these circumstances.

Impermissible Deed Restriction Requirements

City code section 15-4E-2(E) requires a restrictive covenant to be placed on the property prior to the issuance of a certificate of occupancy for an ADU. This is a clear violation of Government Code section 66323, which prohibits any standards not explicitly authorized in that section. Deed restrictions are also not permitted by Government Code section 66315, which forbids standards not listed in section 66314, and it is unclear why the City would want applicants to go through the trouble of filing such a deed restriction, other than to discourage ADU development by increasing development cost.

The California Department of Housing and Community Development (“HCD”) has communicated that such deed restrictions are unlawful in its review of other cities’ ADU ordinances. See, for example, the attached August 26, 2024 HCD review of San Marino’s ADU ordinance, in which HCD instructs the City of San Marino to remove its deed restriction requirement.

Separately, City code section 15-4E-2(F) requires certain deed restrictions, required by the City and declaring accessory structures as non-inhabitable, to be lifted prior to issuance of a building permit for an ADU. This is also a clear violation of Government Code section 66323, which prohibits any standards not explicitly authorized in that section. Owner occupancy standards are also not permitted by Government Code section 66315, which forbids standards not listed in section 66314.

Additionally, such deed restrictions imposed on ADUs (or on other accessory structures) are unenforceable. This is due to the absence of horizontal privity between the City and the applicant. In other words, since the City does not own the applicant's property at the time of the application, and does not own a neighboring property to whose benefit the proposed restriction(s) redound, black letter property law bars the restrictions from binding future property owners. (See, e.g., *Scaringe v. J. C. C. Enters* (1988) 205 Cal.App.3d 1536 [describing the types of privity relationship between covenanting parties that allow enforcement of a deed restriction]; see also Civ. Code §§ 1460 et seq.)

Generally Impermissible Requirements

City code section 15-4E-3 requires ADUs to meet all the requirements for accessory structures imposed by the underlying zoning except under specific exceptions. This type of blanket imposition of all underlying standards is not allowed by state law.

As discussed above, state law gives local governments authority to enact zoning ordinances that implement a variety of development standards on ADUs. (Gov. Code, § 66314.) The standards in these local ordinances are limited by state law so as not to overly restrict ADU development. (See *id.*) And state law forbids cities from imposing other standards on ADUs beyond what are specifically listed in Government Code, section 66314. (Gov. Code, § 66315.)

Separately from local ADU ordinances, Gov. Code, § 66323 prescribes a narrower set of ADU types for which it imposes a ministerial duty on cities to approve. The City must approve building permits for ADUs that meet specific height, size, and setback criteria. The City cannot therefore impose the underlying zoning requirements on such ADUs.

Impermissible Setback Requirements

City code section 15-4E-3(B) mandates that attached ADUs, and ADUs contained within a primary dwelling, must conform to the setback requirements that the underlying zoning district imposes on primary dwellings. However, this disregards the duty of the City to allow ADUs proposed within a primary dwelling expansions of up to 150 square feet for the purposes of facilitating ingress and egress. (Gov. Code, § 66323, subd. (a)(1)(A).) The City must allow such expansions notwithstanding underlying setback requirements.

Impermissible Floor Area Limitations

City code section 15-4E-3(C)(1) forbids ADUs within a primary dwelling to be more than 49% of the combined floor area of the two dwellings. City code section 15-4E-3(C)(2) limits detached ADUs to 1,200 square feet. And City code section 15-4E-3(C)(3) forbids the combined area of the ADU and primary dwelling from exceeding the maximum permitted floor area on the lot.

However, none of these restrictions are not permitted for ADUs that qualify for the protections of Government Code section 66323, subdivision (a)(1), as the state law forbids applications of regulations other than those listed in that section.

This means that an applicant may convert more than half of a primary dwelling into an ADU. This also means that an applicant is free to convert an accessory building into an ADU, even if the accessory structure is greater than 1,200 square feet (and the resulting ADU is also greater than 1,200 square feet). In addition, this means that an applicant can add an additional 150 square feet to an ADU converted from existing space for the purposes of ingress and egress, even if the parcel has already maxed out its allowable floor area under local zoning.

Impermissible Entrance Location Requirements

City code section 15-4E-3(F) forbids an ADU entrance facing the front yard when the ADU is converted from space within the primary dwelling. However, the City cannot impose this requirement on ADUs that qualify for the protections of Government Code section 66323, subdivision (a)(1), as the state law forbids applications of regulations other than those listed in that section.

Out-of-date Government Code Reference

City code section 15-4E-3(G) refers to Government Code section 65852.2. However, this section of code has been reorganized as Government Code 66314 et seq. Given that the City is amending its code, it should make sure its references to state law are up to date.

Potentially Impermissible Parking Requirements

City code section 15-4E-3(E) exempts ADUs within ½ mile of transit from parking requirements and also relieves applicants of the need to replace parking that is lost as result of ADU development.

It is positive that the City's code contains these provisions as they are required by state law. However, the structure and contents of the City's code raise questions about the City's parking requirements for ADUs.

The ADU chapter contains no other references to parking. Therefore, the Code requires that an applicant must obey underlying zoning regulations regarding parking requirements (this is separately problematic, as addressed above). For parking requirements, underlying zoning district regulations refer to Chapter 15 of Title 15. Chapter 15 of Title 15, in turn, refers an applicant back to Chapter 4E for ADU parking requirements.

This means that other than the contents of code section 15-4E-3(C)(1), the City is not regulating parking for ADUs. While CalHDF applauds a lack of parking requirements, we are

concerned about what parking City may be requiring in practice for ADUs, as well as potential confusion for applicants. To address this, the City should amend its code to either clearly exempt all ADUs from parking requirements, or make clear that pursuant to state law various types of ADUs are all entitled to parking exemptions, as follows.

As discussed above, Government Code section 66323 mandates that the City approve a specific class of ADUs subject only to specified height and setback requirements, notwithstanding any local code requirements to the contrary. This means that the City cannot subject such ADUs to parking requirements.

Additionally, as noted above, SB 1211, effective 1 January 2025, makes the prohibition on parking requirements (or any other development standard not authorized by section 66323) even more explicit: Gov. Code, § 66323, subdivision (b): “A local agency shall not impose any objective development or design standard that is not authorized by this section upon any accessory dwelling unit that meets the requirements of any of paragraphs (1) to (4), inclusive, of subdivision (a).”

Additionally, for ADUs that do not qualify for the protections of Government Code section 66323, state law requires the following:

- Government Code section 66314, subdivision (d)(10) forbids requiring more than one parking space per ADU and also requires the allowance of tandem parking and parking in setbacks absent certain findings.
- Government Code section 66322, subdivision (a) exempts the following types of ADUs from all parking requirements:
 - (1) Where the accessory dwelling unit is located within one-half of one mile walking distance of public transit. [already granted by the City’s code]
 - (2) Where the accessory dwelling unit is located within an architecturally and historically significant historic district.
 - (3) Where the accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
 - (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
 - (5) When there is a car share vehicle located within one block of the accessory dwelling unit.
 - (6) When a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit or the parcel satisfies any other criteria listed in this subdivision.

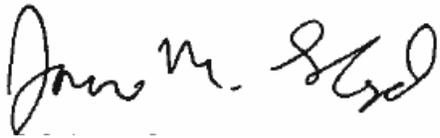


CalHDF is a 501(c)(3) non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at www.calhdf.org.

Sincerely,



Dylan Casey
CalHDF Executive Director



James M. Lloyd
CalHDF Director of Planning and Investigations

Re: CalHDF comment re ADU ordinance fro 12/12/24 Planning Commission meeting

From James Lloyd <james@calhdf.org>

Date Thu 12/12/2024 2:05 PM

To mkeldorf@elsegundoccb.org <mkeldorf@elsegundoccb.org>; jhoeschler@elsegundoccb.org <jhoeschler@elsegundoccb.org>; kmaggay@elsegundoccb.org <kmaggay@elsegundoccb.org>; minga@elsegundoccb.org <minga@elsegundoccb.org>; mchristian@elsegundoccb.org <mchristian@elsegundoccb.org>

Cc VM CityManagersOffice <VMCityManagersOffice@elsegundo.org>; Planning <Planning@elsegundo.org>; *ALL CITY CLERKS <ALLCITYCLERKS@elsegundo.org>; Hensley, Mark <mhensley@hensleylawgroup.com>

 1 attachment (556 KB)

san-marino-adu-findings-8262024(1).pdf;

Additionally, see attached correspondence from HCD referenced in our comment letter.

Thank you,

James M. Lloyd
Director of Planning and Investigations
California Housing Defense Fund
james@calhdf.org

On Thu, Dec 12, 2024 at 2:01 PM James Lloyd <james@calhdf.org> wrote:

Dear El Segundo Planning Commission,

The California Housing Defense Fund ("CalHDF") submits the attached public comment regarding the proposed amendments to the City's accessory dwelling unit ("ADU") ordinance, which are calendared as agenda item B2 for the December 12, 2024 Planning Commission meeting.

Sincerely,

James M. Lloyd
Director of Planning and Investigations
California Housing Defense Fund
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DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**DIVISION OF HOUSING POLICY DEVELOPMENT**

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August 26, 2024

Isidro Figueroa, Community Development Director
Department of Community Development
City of San Marino
2200 Huntington Drive, San Marino, CA 91108

Dear Isidro Figueroa:

RE: Review of San Marino's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, §§ 66313 - 66342)

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 JADU Law have been re-numbered (Enclosure 1).

Thank you for submitting the City of San Marino (City) ADU Ordinance No. O-24-1411 (Ordinance), adopted March 13, 2024, 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 66326, subdivision (a). HCD finds that the Ordinance does not comply with State ADU and junior accessory dwelling unit (JADU) Laws in the manner noted below. Pursuant to Government Code section 66326, subdivision (b)(1), 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 September 25, 2024.

While the Ordinance addresses many statutory requirements, HCD finds that the Ordinance fails to comply with State ADU Law as follows:

1. Section 23.01.01 – *ADU Definition* – The Ordinance defines an ADU as, “An attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include a kitchen as defined in this Chapter, a full bath, and permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel where the primary single-family residence is situated.” However, ADUs may also be located on lots and/or parcels with existing or proposed multi-family structures.¹ Therefore, the City must amend its ordinance to allow ADUs on the same parcel as the single-family **or multifamily dwelling** is or will be situated.
2. Section 23.01.01 (2) – “*Converted ADU*” Definition – The Ordinance states that, “A Converted ADU does not include an ADU that would: (a) increase the height of an Existing Structure; (b) require the removal of more than 50 Cubic Yards as

¹ Gov. Code, §§ 66313, subd. (a); 66314; subd. (d)(2); 66317, subd. (a).

part of the excavation of an Existing Structure...” However, ADUs pursuant to Government Code section 66323, subdivisions (a)(1) and (a)(3), may not be precluded from development for increasing the height of an existing structure or removing more than 50 Cubic Yards of the existing structure as a condition of ADU approval. While the City may provide a definition for converted ADUs, the definition cannot preclude ADUs pursuant to Government Code Section 66323, Subdivisions (a)(1) and (a)(3). Therefore, the City must amend its ordinance to remove these sections or explicitly clarify that ADUs converted from existing or proposed space may not be precluded from development.

3. Section 23.02.25, subdivisions (A), (B)(5), (E)(3), (E)(4), (F)(2)(a), (F)(3)(a), (G)(1), (G)(2)(a), (G)(3)(a), (H)(16)(a), & (I)(5) – *Out of Date Code References* – The Ordinance makes repeated references to standards contained within Government Codes 65852.2 and 65852.22. While correct at the time of adoption, these code references are now out-of-date due to the Chaptering of Senate Bill 477. Therefore, the City must amend its ordinance to replace these code references with their, re-chaptered sections.
4. Section 23.02.25 (D)(3) – *Application Denial* – The Ordinance states, “An application that does not conform to the specific standards set forth in this Section, including the development standards set forth in Section 23.02.25(G) shall not be approved ministerially but shall require design review, a conditional use permit, or variance, as applicable. However, state law requires that when a local agency denies an application for an ADU or JADU, the permitting agency shall, within 60 days, return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.² Therefore, the City must amend its ordinance to reflect the lawful permit denial procedure.

Section 23.02.25 (E) – *Location and Zoning Requirements* – The Ordinance states, “An accessory dwelling unit may be located only on residentially zoned lots or upon a lot with an existing residential dwelling.” However, ADUs must be allowed in all areas zoned to allow single-family or multi-family use, whether these areas are exclusively zoned for residential use or not.³ Therefore, the City must amend its ordinance to reflect state law.

5. Section 23.02.25 (E)(1), (2), and (3) – *ADU Allotment* – The Ordinance states that, “One JADU and one ADU may be constructed on a single family residential lot where the JADU and ADU meet the requirements in Government Code Section 65852.2(e).” However, this language omits the potential for ADUs constructed on lots zoned for multifamily use.⁴ Therefore, the City must amend its ordinance to also allow for ADUs constructed on lots zoned for multifamily use.

² Gov. Code, § 66317, subd. (b).

³ Gov. Code. §§ 66314, 66323, subd. (a)(3).

⁴ Gov. Code, §§ 66314, 66323, subd. (a)(3).

Additionally, Government Code section 66323, subdivision (a), states, “Notwithstanding Sections 66314 to 66322, inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following: (1) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling... (A) 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.” Paragraph (2) permits “[o]ne 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 means that any of these ADU types can be combined on a lot zoned for single-family dwellings.

This permits a homeowner, who meets specified requirements, to create one converted ADU; one detached, new construction ADU; and one JADU. Thus, if the local agency approves an ADU that is created from existing (or proposed) space, and the owner subsequently applies for a detached ADU (or vice versa) that meets the size and setbacks pursuant to the subdivision, the local agency cannot deny the application, nor deny a permit for a JADU under this subdivision.

This subdivision applies equally to ADUs created pursuant to Government Code section 66323, subdivisions (a)(3) and (a)(4) on lots with proposed or existing multifamily dwellings. Limiting lots to one ADU would prevent property owners from creating ADUs by right under subdivision (a). Therefore, the City must amend its ordinance to allow for ADU development pursuant to Government Code section 66323, subdivisions (a).

6. Section 23.02.25 (E)(4) – *Fire Safety* - The Ordinance states “For fire safety purposes, new ADUs and JADUs may only be located on a residential lot that has: 1) at least a 10-foot wide fire lane within 150 feet of the subject property and 2) a minimum fire flow of 1,000 gallons per minute.” However, Government Code section 66314, subdivision (a) provides that a local agency may, through an ordinance, “Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.” While the City is authorized to designate specific areas where ADUs may be permitted based on impacts on traffic flow and public safety, they can only do so based on substantial evidence in the record that the construction of the ADU it could have a specific, adverse impact on public health and safety⁵. Therefore, the City must remove this section of the Ordinance or explicitly incorporate the “substantial evidence” to comply with State ADU Law.
7. Section 23.02.25 (F)(2) – *Deed Restriction* – The Ordinance requires a deed restriction for ADUs. While Government Code section 66333, subdivision (c) requires the recordation of a deed restriction for JADUs, the deed restrictions for

⁵ Gov. Code, § 66314 (d)(8).

JADUs are limited to prohibit the separate sale of a JADU and a restriction on the size and attributes of the JADU. Government Code section 66315 requires that no additional standards, other than those provided in Government Code Section 66314, shall be used, or imposed on accessory dwelling units. The City may not require a deed restriction prior to and as a condition of approval of an ADU building permit application.⁶ Therefore, the City must amend the Ordinance to remove this requirement.

8. Section 23.02.25 (F)(2)(b) – *JADU Rental Terms* – The Ordinance states, “If the ADU/JADU is rented, it shall not be rented for a period of less than 90(ninety) consecutive days. A minimum 90-day rental requirement imposes rental requirements for JADUs that are inconsistent with state law, which only requires a minimum rental term of 30 (thirty days) for ADUs and JADUs built pursuant to Government Code section 66323.⁷ Therefore, the City must amend its ordinance to clarify that JADUs rental term must be longer than 30 days consistent with Government Code section 66323 subdivision (d).
9. Section 23.02.25 (F)(2)(d); (H)(1); (H)(2); (H)(6) – *Livable Area* – The Ordinance states that, “The ADU/JADU shall be restricted to the Livable Area approved at the time of building issuance.” However, State ADU Law allows for the development of multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space.⁸ Therefore, the City must amend its Ordinance to allow for the development of ADUs pursuant to Government Code section 66323, subd. (a)(3).

Additionally, the Ordinance defines “Livable area” as “the square footage of all floor areas of a building, including basements, measures from the exterior faces of walls...” The Ordinance makes multiple references to “Livable Area” regarding floor area calculations. However, floor area must be calculated according to area within the inside perimeter of the exterior walls of the building under consideration, exclusive of vent shafts and courts, without deduction for corridors, stairways, ramps, closets, the thickness of interior walls, columns, or other features.⁹ Therefore, the City must amend its ordinance to calculate floor area in alignment with the California Building Code (CBC).

10. Section 23.02.25 (F)(2)(e) – *Separate Utilities* – The Ordinance states that, “A second unit may not have utility services separate from those of the main residential structure on the same property.” However, for ADUs described in paragraph (1) of subdivision (a) of Government Code Section 66323, a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the ADU and the utility or impose a related connection fee or capacity charge, unless the ADU was constructed with a new single-family dwelling, or upon separate

⁶ Gov. Code, § 66314.

⁷ Gov. Code, § 66323, subd. (d).

⁸ Gov. Code, § 66323, subd. (a)(3).

⁹ CBC, § 202.

conveyance of the ADU pursuant to Section 66342.¹⁰ Therefore, the City must amend its ordinance to specify that ADUs described in paragraph (1) of subdivision (a) of Government Code Section 66323 are an exception to this standard.

11. Section 23.02.25 (F)(2)(g) – *Permit Revocation* – The Ordinance states that, “Violations and lack of compliance with any provisions of this Section may result in legal action against the property Owner, including revocation of any right to maintain an ADU/JADU on the property...” While this provision aligns with State ADU Law, a local agency, upon request of an owner of an ADU for a delay in enforcement, shall also delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code, pursuant to Government Code section 66331. Therefore, the City should amend its ordinance to clarify that San Marino residents may request such a delay in enforcement of building standards prescribed by the Ordinance under certain conditions.
12. Section 23.02.25 (G)(1) – *ADUs on Multi-family Lots* – The Ordinance outlines the planning application exemptions for ADUs created pursuant to Government Code section 65852.2, subdivisions (e)(1)(A) and (B) (now section 66323, subdivisions (a)(1) and (2)). However, the Ordinance fails to specify, here and elsewhere in Section 23.02.25, the potential for the development of ADUs on lots with proposed or existing multifamily dwellings per Government Code section 66323, subdivisions (a)(3) and (4). As Government Code outlines the standards to be met for this type of ADU on lots with proposed or existing multi-family dwellings, the City’s Ordinance must do the same. Therefore, the City must amend its ordinance to clarify the complete potential for comprehensive ADU development on lots with existing or proposed multi-family dwellings pursuant to state law.
13. Section 23.02.25 (H)(2); (H)(3) – *ADU Height and Datum Point Definition* – The Ordinance restricts attached and detached ADUs from exceeding “one story or sixteen feet in height”. However, these requirements were superseded on January 1, 2023, by the passage of SB 897. Consequently, local agencies may not impose any height limitation that does not allow for the minimum standards enumerated by Government Code section 66321, subdivision (b)(4). Therefore, the City must amend its ordinance to reflect the respective statutory height limitations. Additionally, please clarify what is meant by “datum point” or remove from the Ordinance.
14. Section 23.02.25 (H)(6)(b) – *“Street Facing” Setbacks* – The Ordinance states, “Attached and detached ADU [sic] on corner lots are required to abide by the front and street-facing side yard setback requirements of the underlying zoning district in which the ADU is located.” Further, a setback of no more than four feet from the side and rear lot lines shall be required for an ADU not converted from an existing structure or a new structure constructed in the same location and to

¹⁰ Gov. Code, § 66324, subd. (d).

the same dimensions as an existing structure.¹¹ Any “street-facing side yard setback” regulations that imposes further restrictive setback requirements would conflict with state law. Therefore, the City must amend its ordinance to remove these requirements.

15. Section 23.02.25 (H)(9); (H)(11); (H)(12) – *Design Standards* – The Ordinance states, “An ADU shall exactly match the building materials, color, style, and form of the primary residence.” The Ordinance goes on to state that, “Exterior lighting shall be shielded or directed so that it does not glare off-site or illuminate the primary residence or any adjacent property.” Finally, the Ordinance requires that: “Windows shall be located to avoid direct line of sight to windows of adjacent properties. However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 – 66322 may not preclude the development of ADUs pursuant to Government Code sections 66323. Therefore, the City must amend its ordinance to clarify. .

Additionally, design standards for ADUs must be objective standards, i.e. standards that involve no subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.¹² Terms such as “avoid direct line of sight” are subjective terms. Therefore, the City must adopt objective design standards.

16. Section 23.02.25 (H)(14) – *Design Standards* – The Ordinance states that, “Any common wall separating the accessory dwelling unit from the main building shall be soundproofed.” However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 – 66322 may not preclude the development of ADUs pursuant to Government Code sections 66323. Therefore, the City must amend its ordinance to clarify.

17. Section 23.02.25 (H)(16)(b); (H)(16)(e) – *Parking Standards* – The Ordinance states that ADU parking will not be required if, “The ADU is entirely within a proposed or existing primary dwelling or other structure”, or if “There is a City-approved and dedicated parking space for a car share vehicle located within one block of the ADU. However, local agencies shall not impose parking standards on accessory dwelling units that are **part of** the proposed or existing primary residence, rather those that are entirely within these structures.¹³ Additionally, local agencies shall not impose parking standards ADUs that are located within one block of a car share vehicle, regardless of City approval.¹⁴ Finally, local agencies shall *a/so* not impose parking standards on ADUs when a permit application for an ADU is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot.¹⁵

¹¹ Ibid.

¹² Gov. Code, §§66313, subd. (h); 66314, subd. (b)(1).

¹³ Gov. Code, § 66322, subd. (a)(3).

¹⁴ Gov. Code, §66322, subd. (a)(5).

¹⁵ Gov. Code, § 66322, subd. (a)(6).

Therefore, the City must amend its ordinance to revise parking exemption conditions for ADUs.

18. Section 23.02.25 (I)(1) – *JADU Owner Occupancy* – The Ordinance states that, “The Owner of a parcel proposed for a JADU shall occupy as a principal residence...” However, owner-occupancy is required for the owner of the single-family residence which will contain the JADU, rather than the owner of the parcel on which the residence sits.¹⁶ As a single parcel may contain multiple lots with single family dwellings, the Ordinance fails to specify owner-occupancy requirements in scenarios where the parcel owner and residence owner differ, such as a land lease agreement. Therefore, the City must amend its ordinance to include more precise owner-occupancy language.
19. Section 23.02.25 (I)(4) – *JADU Development Standards* – The Ordinance states that, “The JADU must be contained entirely within the walls of the existing or proposed Single Family Dwelling Unit.” In addition to this requirement, State JADU Law states that enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence and therefore “contained entirely within the walls of the existing or proposed Single Family Dwelling Unit”.¹⁷ Therefore, the City must add this language to comply with State JADU Law.
20. (I)(7) – *JADU Interior Entry* – The Ordinance states, “An interior entry to the main living area shall be provided to serve a JADU.” However, a requirement for an interior entry from JADU to main living area shall only be required if the JADU lacks a separate bathroom.¹⁸ Therefore, the City must amend its ordinance to remove this requirement or specify when, and only when, this requirement may apply.

The City has two options in response to this letter.¹⁹ The City can either amend the Ordinance to comply with State ADU Law²⁰ or adopt the Ordinance without changes and include findings in its resolution adopting the Ordinance that explain the reasons the City believes that the Ordinance complies with State ADU Law despite HCD’s findings.²¹ If the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD must notify the City and may notify the California Office of the Attorney General that the City is in violation of State ADU Law.²²

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.

¹⁶ Gov. Code, § 66333, subd. (b).

¹⁷ Gov. Code, § 66333, subd. (d).

¹⁸ Gov. Code, § 66333, subd. (e)(2).

¹⁹ Gov. Code, § 66326, subd. (c)(1).

²⁰ Gov. Code, § 66326, subd. (b)(2)(A).

²¹ Gov. Code, § 66326, subd. (b)(2)(B).

²² Gov. Code, § 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)