

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

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April 30, 2025

Albert Lopez, Planning Director  
Planning Department  
County of Alameda  
224 W. Winton Avenue, Room 111  
Hayward, CA 94544

Dear Albert Lopez:

**RE: Review of County of Alameda's Accessory Dwelling Unit (ADU) Ordinance  
under State ADU Law (Gov. Code, §§ 66310 - 66342)**

Thank you for submitting the County of Alameda (County) ADU Ordinance No. O-2024-32 (Ordinance), adopted September 19, 2024, to the California Department of Housing and Community Development (HCD). The Ordinance was received on November 7, 2024. HCD has reviewed the Ordinance and submits these written findings pursuant to Government Code section 66326, subdivision (a). HCD finds that the Ordinance fails to comply with State ADU Laws in the manner noted below. Pursuant to Government Code section 66326, subdivision (b)(1), the County has up to 30 days to respond to these findings. Accordingly, the County must provide a written response to these findings no later than May 30, 2025.

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

1. *Senate Bill (SB) 1211 (Chapter 296, § 3, Statutes of 2024)* – As of January 1, 2025, the Legislature changed Government Code section 66323. Subdivision (a)(4)(A)(ii) and (iii), now allows for the following:
  1. (ii) On a lot with an existing multifamily dwelling, not more than eight detached accessory dwelling units. However, the number of accessory dwelling units allowable pursuant to this clause shall not exceed the number of existing units on the lot.
  2. (iii) On a lot with a proposed multifamily dwelling, not more than two detached accessory dwelling units.
2. *Assembly Bill (AB) 2533 (Chapter 834, Statutes of 2024)* - As of January 1, 2025, there are changes to Government Code section 66332. Subdivisions (a) and (b) were changed and subdivisions (d) – (f) were added. Changes include permitting previously unpermitted ADUs, adding the same protections for JADUs, and setting additional requirements for local agencies. The County should review these new requirements and adjust the Ordinance to comply with State ADU Law.

3. Section 17.04.010 – *Definition of ADU* – The Ordinance defines an ADU as “an accessory, second, or secondary unit that is attached or detached which provides complete independent living facilities for one or more persons.” However, State ADU Law defines an ADU as “an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence.”<sup>1</sup> The Ordinance’s definition uses the terms “second” and “secondary” which incorrectly imply a limit of one ADU in addition to the primary dwelling. The County must amend the ordinance to delete these terms and align with the statutory definition of an ADU.
4. Section 17.04.010 – *Definition of Conversion* – The Ordinance defines “conversion” as follows: “the modification to the occupancy of a **legally existing** space within the existing volume of a building or covered structure without expansion, except up to 150 sq. ft. of expansion as allowed for ingress and egress” (emphasis added). However, State ADU Law allows for conversion “within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure.”<sup>2</sup> Statute does not require the structure being converted to be permitted initially, provided that the proposed ADU is permitted. The County must amend the Ordinance to delete the phrase “legally existing” from the passage quoted above.
5. Section 17.04.010 – *JADU Interior Entry* – The Ordinance states: “Junior Accessory Dwelling Units may share bathroom facilities with the Primary Dwelling Unit.” However, a JADU ordinance shall require that “If a permitted junior accessory dwelling unit does not include a separate bathroom, the permitted junior accessory dwelling unit shall include a separate entrance from the main entrance to the structure, with an interior entry to the main living area.”<sup>3</sup> The Ordinance does not include this requirement. The County must amend the Ordinance to require the interior entry when a JADU does not include a separate bathroom.
6. Section 17.04.010 – *Definition of Secondary Unit* – The Ordinance includes a definition of “secondary unit” that is very similar to the definition of an ADU. As noted in Finding 3, the use of the term “secondary” in connection with the definition of an ADU incorrectly implies a limit of one ADU per lot. This definition appears related to the “Policy for Secondary Units in Rural Residential and Agricultural Areas,” which will be addressed in a subsequent finding. The County must amend the Ordinance so that an ADU is only defined once.

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<sup>1</sup> Gov. Code, § 66313, subd. (a). Only the most relevant part of the definition is quoted above.

<sup>2</sup> Gov. Code, § 66323, subd. (a)(1)(A).

<sup>3</sup> Gov. Code, § 66333, subd. (e)(2).

7. Section 17.04.010 – *Definition of Single-family Dwelling* – The Ordinance defines a single-family dwelling as follows: “one or more detached Primary Dwelling Units on one lot.” However, a single-family dwelling also includes an attached dwelling unit such as a townhouse if it is located on its own lot.<sup>4</sup> The Ordinance does not account for attached single-family dwellings. The County must amend the Ordinance to account for attached single-family dwellings.
8. Section 17.06.030 – *Permitted Uses in Agricultural (A) Districts* – The Ordinance lists ADUs as a permitted use in A districts. However, the Ordinance does not list JADUs. JADUs are a permitted use on a “lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.” This means where the zoning of the lot permits single-family residences, as is the case in the County’s A districts JADUs are also a permitted use. The County must amend the Ordinance to clarify that JADUs are a permitted use in A districts.
9. Section 17.06.030.L.3 – *Floor Area in A Districts* – The Ordinance states, “If only one accessory dwelling unit is proposed, then the Accessory Dwelling Unit that is not subject to floor area regulations of Chapter 17.55 shall be subject to maximum floor area of one thousand two hundred (1,200) square feet.” However, conversion ADUs are not subject to floor area limits.<sup>5</sup> Here the County applies a floor area limit in a way that includes conversion ADUs which are not subject to floor area limits. The County must amend the Ordinance to exempt conversion ADUs from this floor area limit.
10. Section 17.06.030.L.4 – *Floor Area in A Districts* – The Ordinance states, “All Accessory Dwelling Units greater than 800 square feet in floor area shall be located on the same building envelope as the Primary Dwelling Unit.” However, State ADU Law requires the County to allow an ADU to have a floor area of 850 square feet or 1,000 square feet if it contains more than one bedroom.<sup>6</sup> The ordinance limits ADU floor area here unless the ADU is located in the same building envelope as the primary dwelling unit, a requirement not found in statute. The County must amend the Ordinance to allow floor areas of 850 square feet or 1,000 square feet if the ADU contains more than one bedroom.
11. Section 17.06.030.L.5 – *1998 Second Unit Policy* – The Ordinance requires in A zones that: “Any Accessory Dwelling Unit that is not subject to floor area regulations of Chapter 17.55 and that is proposed to have a floor area or configuration not conforming to paragraph 2 or paragraph 3 above shall not be allowed as an Accessory Dwelling Unit and **shall instead be reviewed under the "Policy for Secondary Units in Rural Residential and Agricultural Areas". adopted by the County Board of Supervisors on July 2, 1998. and revised on October 1, 2001 as amended**” (emphasis added). However, statute provides: “Section 66314 establishes the maximum standards that a local

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<sup>4</sup> HCD (2025). ADU Handbook, page 11.

<sup>5</sup> Gov. Code, § 66323, subds. (a)(1) and (a)(3).

<sup>6</sup> Gov. Code, § 66321, subd. (b)(2).

agency shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. 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.”<sup>7</sup> The Ordinance does not include the substance of the “Policy for Secondary Units” and HCD has not received a copy of the policy from the County. The policy may not be applied to ADUs if it conflicts with State ADU Law. The County must amend the Ordinance to delete the requirement to comply with the “Policy for Secondary Units” or cite the specific section of the County Code or Ordinance number that contains the policy. HCD also hereby submits a public records request for a digital copy of the policy.

12. Section 17.52.780 – *Parking in Setback Areas* – The Ordinance states, “No required parking space shall occupy any required front yard or any required street side yard of a corner lot, or any required setback from a driveway or any part of a required loading space. All required parking spaces shall be provided on the same building site as the use of building for which they are required.” However, State ADU Law provides: “Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.”<sup>8</sup> The Ordinance prohibits parking in certain setback areas without making findings that allowing such parking is not feasible based upon specific site or regional topographical or fire and life safety conditions. The County must either amend the Ordinance to delete this requirement or adopt adequate findings to support the requirement.
  
13. Section 17.54.225.E – *Site Development Review for Garage Conversions* – The Ordinance states, “Site development review shall not be required for garage conversions when the purpose of the conversion is to create a new Accessory Dwelling Unit within the space of an existing attached or detached garage, and the new unit meets the requirements contained in Section 17.55, concerning Accessory Dwelling Units.” This exemption is appropriate for ADUs because ADUs must be reviewed ministerially and some of the submittal requirements for a site development permit application would be excessive in the context of an application for a conversion ADU (e.g., land survey, elevations of structures not being converted). However, JADUs should also be exempt from the requirement for site development review, for the same reasons.<sup>9</sup> The County must amend the Ordinance to also exempt JADUs from the County’s site development review process.

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<sup>7</sup> Gov. Code, § 66315.

<sup>8</sup> Gov. Code, § 66314, subd. (d)(10)(B).

<sup>9</sup> Gov. Code, § 66335, subd. (a)(1).

14. Section 17.55.030.2 – *Zones Permitting JADUs* – The Ordinance states, “Junior Accessory Dwelling Units: Will be permitted to be established as a permanent housing option on any property in a Single-Family Residence (R-1) Zoning District or the Planned Development (PD) Zoning District based on the R-1 Zoning District that either contains or is constructed concurrently with a Single-family dwelling, and when established in compliance with state and local ordinance.” However, statute provides: a JADU ordinance shall “Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.”<sup>10</sup> By listing two zones in which JADUs are permitted, the County is implicitly excluding JADUs from all other zones. The County has other zoning districts in which single-family homes are a permitted use (e.g., R-2, R-S, etc.). These zones are also eligible for JADUs because they are “zoned for single-family residences,” even though they also allow other uses. The County must amend the Ordinance to either replace the list of zones permitting JADUs with a statement that any zone permitting a single-family home also permits a JADU,<sup>11</sup> or by providing a complete list of each zone which permits single-family homes.
15. Section 17.55.040 – *Zoning for JADUs* – The Ordinance states, “Accessory Dwelling Units and Junior Accessory Dwelling Units shall be permitted in all zoning districts that permit Single-family, Multifamily, or Mixed-use dwellings.” However, JADUs are limited to lots “zoned for single-family residences.”<sup>12</sup> The Ordinance implies a JADU may be built on certain lots which do not permit single-family residences. The County must amend the Ordinance to distinguish between where ADUs and JADUs are permitted.
16. Section 17.55.040 – *Second Unit Policy* – The Ordinance states, “Approvals for ADUs measuring up to 1,200 square feet in floor area are subject to the Policy for Secondary Units in Rural Residential and Agricultural Areas.” However, as noted in Finding 11, the Ordinance does not include the substance of the “Policy for Secondary Units” and HCD has not received a copy of the policy from the County. The policy may not be applied to ADUs if it conflicts with State ADU Law. The County must amend the Ordinance to delete the requirement to comply with the “Policy for Secondary Units” or cite the specific section of the County Code or Ordinance number that contains the policy.
17. Section 17.55.060.1.a – *Conversion ADUs* – The Ordinance states, “Accessory Dwelling Units may be attached to the Single-family dwelling, detached from the Single-family dwelling, or may involve the conversion of floor area of an existing **legal** structure” (emphasis added). However, statute provides an ADU ordinance shall require an ADU to comply with certain standards, including: “The accessory dwelling unit is either attached to, or located within, the

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<sup>10</sup> Gov. Code, § 66333, subd. (a).

<sup>11</sup> We prefer this compliance option as it is less prone to error and more resilient to future changes to the zoning code.

<sup>12</sup> Gov. Code, § 66333, subd. (a).

proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages.”<sup>13</sup> Statute does not require that the structure being converted is initially permitted as a prerequisite to ADU development, only that the resulting ADU is permitted. The County must amend the Ordinance to delete the word “legal” from the quoted passage above.

18. Section 17.55.060 – *Passageway Requirement* – The Ordinance states, “Access to the public right-of-way may be provided through the rear yard of the Primary residence or a dedicated pathway.” However, “No passageway shall be required in conjunction with the construction of an accessory dwelling unit.”<sup>14</sup> While the Ordinance does not use the term “passageway,” it is unclear whether the County is requiring a pathway that meets the statutory definition of a passageway. The County must amend the Ordinance to clarify that the pathway will not be required to be unobstructed clear to the sky.
19. Section 17.55.070.1.b – *Front Setback Requirements* – The Ordinance requires the following minimum front setback: “Minimum is the same as for Primary Dwelling Unit for Accessory Dwelling Units which measure over 800 square feet in floor area.” However, for ADUs approved pursuant to Government Code section 66323: “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).”<sup>15</sup> Multifamily detached ADUs approved pursuant to section 66323, subdivision (a)(4) do not have a floor area limit and are not subject to front setback requirements, even if they are larger than 800 square feet. The County must amend the Ordinance to note this exception.
20. Section 17.55.070.2 – *Distance Between ADUs* – The Ordinance states, under ADU development standards: “Distance Separation: Six-foot separation minimum from any other building for Accessory Dwelling Units measuring over 800 square feet in floor area.” However, for ADUs approved pursuant to Government Code section 66323: “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).”<sup>16</sup> Multifamily detached ADUs approved pursuant to section 66323, subdivision (a)(4) do not have a floor area limit and are not subject to distance between building requirements even if they are larger than 800 square feet. The County must amend the Ordinance to note this exception.

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<sup>13</sup> Gov. Code, § 66314, subd. (d)(3).

<sup>14</sup> Gov. Code, § 66314, subd. (d)(6). A passageway is defined as “a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.”

<sup>15</sup> Gov. Code, § 66323, subd. (b).

<sup>16</sup> Gov. Code, § 66323, subd. (b).

21. Section 17.55.070.5 – *Residential Design Standards* – The Ordinance states, “Accessory Dwelling Units measuring over 800 square feet in floor area are subject to the “Residential Design Standards and Guidelines for the Unincorporated Communities of West Alameda County,” as amended, as incorporated in Title 17.” HCD was not provided with a copy of this 214-page document but located it on the County’s website. The Design Standards may not be applied to the extent that they conflict with State ADU Law. Major areas of potential conflict are described in Government Code section 66314, subdivision (b)(1), section 66321, subdivision (b)(3) and section 66323.<sup>17</sup> The County must amend the Ordinance to remove this requirement or note that the Design Standards only apply to the extent that they do not conflict with State ADU Law.
22. Section 17.55.080.1 – *Floor Area Definition* – The Ordinance states, “The size of the unit shall be measured from the side of the exterior wall of the dwelling unit to the opposing exterior wall face enclosing the unit, or to the centerline of the furthest opposing interior wall that separates the Accessory Dwelling Unit or Junior Accessory Dwelling Unit and Primary Dwelling Unit living space.” However, ADUs are required to comply with the California Building Standards Code.<sup>18</sup> The California Building Code (CBC) defines “floor area, gross” as “The floor area within the inside perimeter of the exterior walls”.<sup>19</sup> The Ordinance defines floor area as the area within the exterior surfaces of the exterior walls whereas the CBC defines it as within the interior surfaces of the exterior walls. The Ordinance’s definition thus inflates ADU floor area. The County must amend the Ordinance to align with the CBC definition of floor area for purposes of implementing State ADU Law.
23. Section 17.55.080.2.a.i – *Detached ADU Floor Area* – The Ordinance states, “If the detached Accessory Dwelling Unit is to contain 0 or 1 bedrooms, then limited to 850 square feet maximum.” However, the ADUs described by Government Code section 66323, subdivision (a)(4) have no floor area limit. The Ordinance does not note the exception and thus limits the floor area of an ADU type it may not limit. The County must amend the Ordinance to note that detached ADUs approved pursuant to Government Code section 66323, subdivision (a)(4) do not have a floor area limit.
24. Section 17.55.080.2.a.ii - *Detached ADU Floor Area* – The Ordinance states, “If the detached Accessory Dwelling Unit is to contain 2 or more bedrooms, then limited to 1,200 square feet maximum:” However, as noted in Finding 23, the ADUs described by Government Code section 66323, subdivision (a)(4) have no floor area limit. The Ordinance does not note the exception and thus limits the floor area of an ADU type it may not limit. The County must amend the

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<sup>17</sup> This is not an exclusive list of potential conflicts between State ADU Law and the Design Standards. Development standards on ADUs must be objective, must not be applied in a manner that contradicts section 66321 and ADUs approved pursuant to section 66323 are only subject to the standards included in section 66323.

<sup>18</sup> Gov. Code, § 66314, subd. (d)(8).

<sup>19</sup> 2022 CBC, § 2022.

Ordinance to note that detached ADUs approved pursuant to Government Code section 66323, subdivision (a)(4) do not have a floor area limit.

25. Section 17.55.080.2.a.iii – *Detached ADU Floor Area* – The Ordinance states, “If the property contains a Junior Accessory Dwelling Unit, then a detached Accessory Dwelling Unit shall not exceed 800 square feet in floor area.” However, there is no basis in State ADU Law to limit the floor area of a detached ADU to 800 square feet because a property contains a JADU.<sup>20</sup> The County must amend the Ordinance to delete the floor area limit of 800 square feet if the property is developed with a JADU.
26. Section 17.55.080.2.b.i – *Attached ADU Floor Area* – The Ordinance states attached ADUs are subject to the following floor area limit: “Maximum 50% floor area of the Single-family dwelling or 1,200 square feet, whichever is less. (A minimum of 800 square feet is allowed by right regardless of size of the Single-family dwelling.)” However, statute provides: “If there is an **existing** primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling” (emphasis added).<sup>21</sup> Furthermore, an ADU ordinance shall not impose a maximum floor area less than 850 square feet or 1,000 square feet if the ADU has more than one bedroom.<sup>22</sup> The Ordinance applies the 50 percent standard to properties with both existing and proposed primary dwellings, whereas statute only applies it when there is an existing primary dwelling. The Ordinance limits ADU floor area to 800 square feet, whereas statute prohibits limits lower than 850 or 1,000 square feet, depending on the number of bedrooms. The County must amend the Ordinance to only apply the 50 percent standard when there is an existing primary dwelling and to allow an ADU floor area of 850 or 1,000 square feet, regardless of the 50 percent standard, if the ADU contains more than one bedroom.
27. Section 17.55.090 – *ADU Parking Requirements* – The Ordinance states, “One (1) on-site parking space is required for each Accessory Dwelling Unit” and goes on to list several exceptions. However, “Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less.”<sup>23</sup> ADUs which are efficiency units do not have a separate bedroom and instead contain a living room that includes living, sleeping, eating and cooking areas. Thus, some ADUs contain zero bedrooms, and therefore are not subject to parking requirements. The County must amend the Ordinance to note that ADUs which are also efficiency units are not subject to parking requirements.

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<sup>20</sup> Gov. Code, § 66321, subd. (b)(2). An ADU may be limited to 800 square feet in the specific scenarios described in Gov. Code, §§ 66321, subd. (b)(3) & 66323, subd. (a)(2), but this does not depend on whether the property is developed with a JADU.

<sup>21</sup> Gov. Code, § 66314, subd. (d)(4).

<sup>22</sup> Gov. Code, § 66321, subd. (b)(2).

<sup>23</sup> Gov. Code, § 66314, subd. (d)(10).

Statute also provides: “A junior accessory dwelling unit ordinance adopted pursuant to Section 66333 shall not require additional parking as a condition to grant a permit.”<sup>24</sup> This prohibition on parking requirements extends to replacement parking requirements when a JADU converts an attached garage. The Ordinance is silent on JADU parking requirements. The County should amend the Ordinance to clarify that JADU projects are not subject to off-street parking requirements.

28. Section 17.55.090 – *Exceptions to Parking Requirements* – The Ordinance provides a list of exceptions to off-street parking requirements. However, statute provides off-street parking is not required when: “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.”<sup>25</sup> The Ordinance’s list of exceptions is silent on this point. The County should amend the Ordinance to clarify that exceptions to parking requirements apply even when the primary dwelling is proposed concurrently with the ADU.

29. Section 17.55.090.3 – *Exceptions to Parking Requirements* – The Ordinance states no off-street parking is required: “When the project involves converting enclosed parking of the Primary Dwelling Unit”. While this is partially correct, the corresponding section of statute goes further, by prohibiting off-street parking requirements: “Where the accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.”<sup>26</sup> The Ordinance is missing this more expansive prohibition on parking requirements. The County must amend the Ordinance to exempt ADUs from parking requirements when the ADU is part of a proposed or existing primary residence or accessory structure.

30. Section 17.55.120 – *Addition to JADU* – The Ordinance states, “A Junior Accessory Dwelling Unit located within a Single-family dwelling may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing structure. This expansion shall be limited to accommodate ingress and egress (for example, a covered front porch).” However, statute limits a JADU to 500 square feet and allows a 150 square-foot addition to an existing accessory structure which is converted to an ADU, but not for a JADU.<sup>27</sup> The County must amend the Ordinance to delete this provision.

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<sup>24</sup> Gov. Code, § 66334, subd. (a).

<sup>25</sup> Gov. Code, § 66322, subd. (a)(6).

<sup>26</sup> Gov. Code, § 66322, subd. (a)(3).

<sup>27</sup> Gov. Code, §§ 66313, subd. (d); 66323, subd. (a)(1). A JADU must be within the walls of a single-family residence and cannot be converted from a detached accessory structure per Gov. Code, § 66333, subd. (d).

31. Section 17.55.130.1.a – *Separate Sale* – The Ordinance states, regarding both ADUs and JADUs: “The units shall not be sold, transferred or owned separately from the Primary Dwelling Unit on the property, except when owned by certain nonprofit corporations pursuant to California Government Code Section 66341.” However, statute requires: “A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence.”<sup>28</sup> The County must amend the Ordinance to indicate that separate sale of a JADU is prohibited.

Statute also allows the County to permit the separate sale of ADUs through a condominium subdivision. If the County wishes to do so, it should amend the Ordinance to incorporate the provisions of Government Code section 66342.

32. Section 17.55.130.2 – *Owner Occupancy* – The Ordinance states, “For Accessory Dwelling Units only: the owner of the property shall not be required to reside on the property in either the Primary Dwelling Unit or Accessory Dwelling Unit.” While this is correct for standard ADUs, there is an exception for ADUs sold to a qualified buyer at an affordable housing cost pursuant to Government Code section 66341. For this type of ADU, the tenancy in common agreement shall require: “that the qualified buyer occupy the accessory dwelling unit or primary dwelling as the buyer’s principal residence.”<sup>29</sup> The County must amend the Ordinance to note that ADUs approved pursuant to Government Code section 66341 require owner occupancy.

33. Section 17.55.150 – *Nonconforming Zoning Conditions and Building Code Violations* – The Ordinance states, “Pursuant Government Code sections 66322(b) and 66336, the County shall not require the correction of the following as a condition of an Accessory Dwelling Unit or Junior Accessory Dwelling Unit permit approval: 1. Nonconforming zoning conditions prior to the issuance of a permit for Accessory Dwelling Units or Junior Accessory Dwelling Units, except to comply with the California Building Code where the structure is not in compliance with current California Building Code standards. [...] 3. Existing building standards violations on the Primary Dwelling Unit, provided that correcting the violation is not necessary to protect health and safety.” However, statute requires: “The local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety **and** are not affected by the construction of the accessory dwelling unit” (emphasis added).<sup>30</sup> Statute lays out a two-part test: in order to deny the ADU application for a nonconforming zoning condition or building code violation, those conditions must **both** 1) present a threat to public health and safety **and** 2) be affected by the construction of the ADU or JADU. In paragraphs 1 and 3 quoted above, the Ordinance only

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<sup>28</sup> Gov. Code § 66333(c)(1).

<sup>29</sup> Gov. Code, § 66341, subd. (c)(3). The general prohibition on ADU owner occupancy requirements can be found in Gov. Code, § 66315.

<sup>30</sup> Gov. Code, § 66322, subd. (b). Essentially the same language applies to JADUs via Gov. Code, § 66336.

requires one of the two parts of the test, regarding public health and safety, but does not require the second part of the test about being affected by the construction of the ADU or JADU. The County must amend the Ordinance to align with the statutory language.

34. Section 17.55.160 – *Building Standards* – The Ordinance states, “Pursuant to 66310 *et seq.*, Applications for Accessory Dwelling Units and Junior Accessory Dwelling Units shall be subject to all applicable state laws, including the California Building Code, and the regulations below.” However, it would be more accurate to refer to the California Building Standards Code,<sup>31</sup> which includes the California Building Code, the California Residential Code, and other related codes that apply building standards to the construction of ADUs and JADUs. For many ADUs, the Residential Code is more relevant than the Building Code.<sup>32</sup> The County should amend the Ordinance to refer to the California Building Standards Code.
35. Section 17.55.170 – *Typo* – The Ordinance includes the following heading: “Junior Accessory Dwelling Unit Relative to Fire or **Live** Protection Ordinance” (emphasis added). The Ordinance uses the word “Live” where statute refers to “life,” in an apparent typo.<sup>33</sup> The County should amend the Ordinance to align with statute to avoid confusion.
36. Section 17.55.180 – *Severability* – The Ordinance states, “If any part of this chapter is found to be invalid or inconsistent with Government Code Sections 66310, *et seq.*, such provision shall be null and void and the remaining sections will still be applied to the maximum extent feasible.” However, statute provides: “If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this article, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this article for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this article.” In other words, the statute states that the entire ordinance shall be null and void, not simply the misaligned portion. The Ordinance’s claim of severability contradicts the “null and void” provision in State ADU Law. The County must amend the Ordinance to delete the claim that the Ordinance is severable.
37. Section 17.60.100 – *Reasonable Accommodations* – The Ordinance states, “Where the request for reasonable accommodation involves conversion of a garage to living space, variance from the requirements of this chapter for an Accessory Dwelling Unit, or use of a recreational vehicle in a required setback, the request shall include a specific time limit and shall be made contingent on a specific person’s actual need for the accommodation.” However, State ADU Law requires local agencies to ministerially approve garage conversion ADUs and JADUs without an expiration date on the certificate of occupancy.<sup>34</sup> The County

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<sup>31</sup> California Code of Regulations, Title 24.

<sup>32</sup> 2022 California Residential Code, section 1.1.3.

<sup>33</sup> Gov. Code, § 66337.

<sup>34</sup> Gov. Code, §§ 66314, subd. (d)(3); 66323 (a) & 66328.

must amend the Ordinance to delete the time limit for a garage conversion ADU. The County should also assess whether its policy on reasonable accommodations unduly constrains housing opportunities for people with disabilities.

38. *Missing Required Standards* – State ADU Law requires an ADU ordinance to include specific contents, but the Ordinance is missing some of the required contents. These include the standards described in Government Code section 66314, subdivision (d)(8) regarding changes in occupancy, subdivision (d)(12) regarding exemptions from fire sprinkler requirements, subdivision (e) regarding demolition of a detached garage, and subdivision (f) regarding demolition of a detached garage. The County must amend the Ordinance to include these missing requirements.

39. *Preapproved ADU Plans* – Government Code section 65852.27 requires local agencies to have a program for the preapproval of ADU plans by January 1, 2025. The Ordinance is silent on this topic. The County shall implement a program for the preapproval of ADU plans and should consider amending the Ordinance to address how the program will be implemented.

The County has two options in response to this letter.<sup>35</sup> The County can either amend the Ordinance to comply with State ADU Law<sup>36</sup> or adopt the Ordinance without changes and include findings in its resolution adopting the Ordinance that explain the reasons the County believes that the Ordinance complies with State ADU Law despite HCD's findings.<sup>37</sup> If the County fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD must notify the County and may notify the California Office of the Attorney General that the County is in violation of State ADU Law.<sup>38</sup>

HCD appreciates the County's efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the County in fully complying with State ADU Law. Please feel free to contact David Barboza at [david.barboza@hcd.ca.gov](mailto:david.barboza@hcd.ca.gov) if you have any questions.

Sincerely,



Jamie Candelaria  
Senior Housing Accountability Manager  
Housing Policy Development Division

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<sup>35</sup> Gov. Code, § 66326, subd. (c)(1).

<sup>36</sup> Gov. Code, § 66326, subd. (b)(2)(A).

<sup>37</sup> Gov. Code, § 66326, subd. (b)(2)(B).

<sup>38</sup> Gov. Code, § 66326, subd. (c)(1).

**State ADU/JADU Law Statutory Conversion Table**

<b>New Government Code Sections</b>	<b>Previous Government Code Sections</b>
<b>Article 1. General Provisions</b>	
66310	65852.150 (a)
66311	65852.150 (b)
66312	65852.150 (c)
66313	General Definition Section 65852.2 (j) 65852.22 (j)
<b>Article 2. Accessory Dwelling Unit Approvals</b>	
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.
<b>Article 3. Junior Accessory Dwelling Units</b>	
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)
<b>Article 4. Accessory Dwelling Unit Sales</b>	
66340	65852.26 (b)
66341	65852.26 (a)
66342	65852.2 (a)(10)