

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

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November 15, 2024

Lisa Flores, Deputy Development Services Director
Planning Division
City of Arcadia
240 West Huntington Dr.
P.O. Box 60021
Arcadia, CA 91066

Dear Lisa Flores:

RE: Review of Arcadia's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, § 66310 - 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 Junior Accessory Dwelling Unit (JADU) Law have been re-numbered (Enclosure 1).

Thank you for submitting the City of Arcadia (City) ADU Ordinance No. 2396 (Ordinance), adopted April 17, 2023, 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 JADU Laws in the manner noted below. Under 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 December 15, 2024.

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

1. *Statutory Numbering* - The Ordinance contains several references to code sections that were deleted by SB 477, effective March 25, 2024. These include Government Code sections 65852.2, 65852.22 and 65852.26. The contents of these sections were relocated to Government Code, Title 7, Division 1, Chapter 13 (sections 66310-66342, see Enclosure). The City must amend the Ordinance to refer to the correct code sections.
2. Section 9102.01.080 A.1. – *“Clearly Subordinate”* – The Ordinance requires that “All accessory dwelling units shall be clearly subordinate in location and size to the primary structure...” However, Government Code section 66314, subdivision (b)(1) requires that local ordinances “Impose objective standards on accessory dwelling units...” The term “clearly subordinate” is subjective and arbitrary and is therefore inconsistent with State ADU Law. The City must

amend the Ordinance to remove this section and include only objective standards.

3. Section 9102.01.080 A.2. and B.1. – *Unit Allowance* – The Ordinance states, “One of the following is allowed: 1. One Attached ADU (may not be allowed with detached ADU or JADU); or 2. One Detached ADU or a JADU by itself; or 3. One Detached ADU with one JADU.” The later section on “Building Permit Only” ADUs, which describe the four categories of units subject to Government Code section 65852.2, subdivision (e), notes in subsection B that a detached ADU on a lot with a single family primary dwelling may be combined with a “junior accessory dwelling unit that might otherwise be established on the lot under Subsection A.” Taken together, these sections limit the allowance of ADUs to one format of ADU per lot.

However, 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 ADU types permitted under Government Code section 66323 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 section. Therefore, the City must amend the Ordinance to provide the opportunity for all ADU combinations described in Government Code section 66323.

4. Section 9102.01.080 A.3. – *FAR and Lot Coverage* – The Ordinance states, “No accessory dwelling unit may cause the total Floor Area Ratio (FAR) to exceed 45%, or cause the lot coverage of the lot to exceed 50%...[and] No accessory dwelling unit may cause the rear yard lot coverage to exceed 25%.” However, local development standards cannot preclude a unit created subject to Government Code section 66323. Additionally, Government Code section 66321, subdivision (b)(3) prohibits “Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings

that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” The City must amend the Ordinance to specify the exceptions and remove the illegal language.

5. Section 9102.01.080 A.5.a., A.5.b, A.5.c. – *Stories* – The Ordinance restricts height for all ADUs except those attached to primary dwellings to one story. However, local development standards cannot preclude a unit created subject to Government Code section 66323. The City must amend the Ordinance to note the exceptions.
6. Section 9102.01.080 A.6.b. and A.6.c. – *Front Setback* – The Ordinance states, “An attached accessory dwelling unit shall meet the same front setback as required for the primary residence.” It then states, “A new detached ADU may not be located closer to the front property line than the primary dwelling.” However, Government Code section 66321, subdivision (b)(3) prohibits “Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” There is no condition attached to this exception. If the applicant can demonstrate that the front setbacks would preclude a unit subject to local development standards, the application of the front setback would be inconsistent with State ADU Law. Therefore, the City must amend the Ordinance to comply with State ADU Law.
7. Section 9102.01.080 A.7. – *Parking Requirements* – The Ordinance states, “An accessory dwelling unit shall be provided with a minimum of one on-site parking space (covered or uncovered). The uncovered parking space shall be located on a paved surface, and may be provided in the setback areas or as tandem parking. For required parking space dimensions, please refer to Division 3. When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an accessory dwelling unit, the required parking spaces shall be replaced as specified in Table 3-3.”

However, Government Code section 66322, subdivision (a) states:

The local agency shall not impose any parking standards for an accessory dwelling unit in any of the following instances:

- (1) Where the accessory dwelling unit is located within one-half mile walking distance of public transit.
- (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 paragraph.

Additionally, section 66314, subdivision (d)(11) states, “When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.” Therefore, the City must amend the Ordinance to note all parking requirement exceptions.

8. Section 9102.01.080 A.8. – *Sprinklers* – The Ordinance states, “An accessory dwelling unit is required to have sprinklers if the primary dwelling is also required to have fire sprinklers.” However, Government Code section 66314, subdivision (d)(12) and section 66323, subdivision (c), expand on this allowance to state, “The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.” Therefore, the City must amend the Ordinance to include the complete fire sprinkler exemption.
9. Section 9102.01.080 B.1. – *Building Permit Only* – The Ordinance states, “An accessory dwelling unit or junior accessory dwelling unit is only subject to a building permit when it is proposed on a residential or mixed use zone and meets one of the following scenarios...” before describing the four formats of ADUs in Government Code section 66323, subdivision (a). However, this language is unclear and misleading regarding the application of local design standards. Therefore, the City should clarify that local development standards shall not preclude units subject to Government Code section 66323.
10. Section 9102.01.080 B.3.b. – *“Must Act”* – The Ordinance states, “The City must *act* on an application within 60 days from the date the City receives a completed application...” However, current Government Code section 66317, subdivision (a) states, “The permitting agency **shall either approve or deny** the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application...” Therefore, the City must delete the

ambiguous “act” language and amend the Ordinance to include “approve or deny” language.

11. Section 9102.01.080 1. – *Impact Fees* – The Ordinance deleted the language “Any impact fee that is required for an accessory dwelling unit that is 750 square feet or larger in size must be charged proportionately in relation to the square footage of the primary dwelling, or the average square footage of the multifamily dwelling units within a multifamily dwelling structure (e.g. the floor area of the primary dwelling, divided by the floor area of the accessory dwelling unit, times the typical fee amount charged for a new dwelling).” There appears to be no other reference to fee proportionality in the City’s municipal code.

Government Code section 66324, subdivision (c)(1) requires that “Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.” Therefore, the City must amend the Ordinance to clarify the calculation specifically and accurately.

12. Section 9102.01.080 E. – *Owner Occupancy* – The Ordinance states, “All Unless applicable law requires otherwise, all accessory dwelling units that are created on or after January 1, 2025, are subject to an owner-occupancy requirement.” JADU Law requires owner-occupancy; however, Government Code section 66315 states, “Section 66314 establishes the maximum standards that a local 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.” Therefore, the City must remove the owner-occupancy requirement for ADUs.

13. Section 9102.01.080 F. – *Nonconformity and Discretionary Processes* – The Ordinance states, “Any proposed accessory dwelling unit or junior accessory dwelling unit that does not conform to each of the objective design standards in this section may be considered by the City with an Administrative Modification process in Section 9107.05.” The Administrative Modification process allows “Major Director’s Review” and “Commission’s Review” to apply to ADUs. However, Government Code section 66316 requires that local ordinances use “only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units...” Additionally, Government Code section 66322, subdivision (b) states, “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,” and section 66323, subdivision (b) states, “A local agency shall not require, as a condition for ministerial approval

of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.” Therefore, the City must amend the Ordinance to remove these provisions and reflect statutorily mandated ministerial approval of accessory dwelling units.

14. Section 9102.01.080 G.4. and G.7. – *Visibility* – The Ordinance states, “The ADU entrance must not be visible from a public right of way.” It later states, “An ADU that is on real property that is listed in the California Register of Historic Resources must be located so as to not be visible from any public right-of-way.” However, local development standards may not preclude a unit created subject to Government Code section 66323. The City must amend this section to include the exception and codify ministerial approval.

15. Section 9102.01.080 G.9. – *State Exempt* – The Ordinance states, “The ADU and primary dwelling must use the same driveway to access the street, unless otherwise required for fire-apparatus access, as determined by the Fire Department. This requirement does not apply to state-exempt ADUs.” However, “State-exempt” is a term that does not appear in statute, is not defined in the ordinance, and appears nowhere else but section (G)(9). Therefore, the City should amend the Ordinance to accurately reflect State ADU Law.

Please note that the City has two options in response to this letter.¹ The City can either amend the Ordinance to comply with State ADU Law² 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.³ 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.⁴

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 Mike Van Gorder at mike.vangorder@hcd.ca.gov if you have any questions.

Sincerely,



Jamie Candelaria
Senior Housing Accountability Unit Manager
Housing Policy Development Division

¹ Gov. Code, § 66326, subd. (c)(1).

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

³ Gov. Code, § 66326, subd. (b)(2)(B).

⁴ 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)