

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

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December 1, 2025

Carlos de Melo, Director
Community Development Department
City of Belmont
1 Twin Pines Lane
Belmont, CA, 94002

Dear Carlos de Melo:

RE: Review of City of Belmonts' Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, §§ 66310 - 66342)

Thank you for submitting the City of Belmonts' ADU Ordinance No. 2020-1150 (Ordinance), adopted August 25, 2020, to the California Department of Housing and Community Development (HCD). The Ordinance was received on March 28, 2025. 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 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 31, 2025.

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

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 Government Code sections.
2. Section 24.3 (a) (1) – *Unit Allowance* – The Ordinance states, “The lot must contain an existing or proposed single-family home, multi-family residential structure, or mixed-use development featuring a residential component. No more than one accessory dwelling unit and one junior accessory dwelling unit may be constructed on a lot containing a single-family home.”

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 junior accessory dwelling (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.

3. Section 24.3 (a) (2) – *Zoning* – The Ordinance lists ADUs as a permitted use in various 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 permitted use in A districts.
4. Section 24.3 (a) (3), Section 24.3 (a) (4), Section 24.3 (a) (7) – *Deed Restrictions* – The Ordinance requires the property owner to acknowledge in writing the restrictions in subsections (4) and (5) regarding the sale and short-term rental of accessory dwelling units and junior accessory dwelling units, before issuance of a building permit. However, 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. Deed restrictions are not authorized under state law for ADUs. Therefore, although deed restrictions are required for JADUs, the City must amend the Ordinance to remove the deed restriction requirement for ADUs.
5. Section 24.3 (a) (5) – *Owner Occupancy* – The Ordinance states, "Either the single-family home or the accessory dwelling unit must be owner-occupied if the home and accessory dwelling unit are occupied by different families. This requirement does not apply between January 1, 2020, and January 1, 2025." However, the owner occupancy allowance that would have become permissible on January 1, 2025, was removed from State ADU Law with the adoption of AB 976 (Chapter 751, Statutes of 2023). Therefore, the City must amend the Ordinance to remove references to owner occupancy for ADUs.

6. Section 24.3 (a) (8) – *Fire Sprinklers* – The Ordinance states, “The accessory dwelling unit or junior accessory dwelling unit shall conform to all applicable State and local building code requirements. Fire sprinklers may not be required for the accessory dwelling unit unless they are required for the existing single-family home, multi-family residential structure, or mixed-use development featuring a residential component.” However, Government Code, section 66314, subdivision (d)(12) and section 66323, subdivision (c) 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 clarify that ADUs may not trigger sprinkler requirements.
7. Section 24.3 (c) (1), Section 24.3 (d) (1), Section 24.3 (f) (1) – *Development Standards* – The Ordinance lists development standards for both attached and detached ADUs, and requires the ADU unit to conform to all requirements of the underlying residential zoning district, any applicable overlay district, and all other applicable provisions, including height, setback, floor area ratio, and historic preservation requirements. 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....” The underlying development standards in the zoning district may not apply if they conflict with or are more stringent than the Ordinance or State ADU Law.

In addition, Government Code section 66323, subdivision (b), states “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).” Therefore, the City must amend the Ordinance to clarify which standards apply to ADUs under section 66314 and to specify that ADUs under section 66323 are exempt from any standards not found in that section.

8. Section 24.3 (c) (2), Section 24.3 (f) (5) – *Floor Area Ratio* – The Ordinance states, “...the maximum floor area of an ADU attached to the existing single-family and the maximum floor area of a detached multi-family ADU shall not exceed 850 square feet or 1,000 square feet if the ADU provides more than one bedroom. The ADU may not exceed 50 percent of the living space (as defined in Section 65852.2) of the existing single-family home.”

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." For example, when a primary dwelling unit is less than 1600 square feet, the City must still allow an attached ADU of up to 800 square feet.

In addition, Government Code, section 66323, subdivision (a)(4), requires the local agency to approve ADUs that are detached from the multifamily dwelling structure. Detached ADUs on multifamily lots do not have a floor area restriction under Government Code, section 66323, subdivision (a)(4). Therefore, the City must amend the Ordinance and clarify that Section 66321(b)(3) and Section 66323(a)(4) each provide distinct exceptions to the ordinance's general size limitations. The ordinance should explicitly acknowledge and permit both of these exceptions to ensure consistency and legal clarity.

9. Section 24.3 (c) (4), Section 24.3 (d) (6), Section 24.3 (f) (7) – *Design Standards* – The Ordinance lists several design standards for ADUs such as compatible façade materials, same color palette, similar windows, roofing and siding doors and requires these standards to match the Primary Dwelling.

However, Government Code section 66314, subdivision (b)(1), allows local jurisdictions to apply "objective standards on accessory dwelling units." Objective standards involve no personal or 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.¹ Additionally, design standards not found in Section 66323 of the Government Code cannot be imposed on ADUs created under this section. Therefore, the City must eliminate all subjective language and ensure that only objective standards are applied to ADUs developed pursuant to Government Code section 66314. The City should also ensure that the only standards applied to ADUs development pursuant GC 66323, are standards explicitly set forth in that section.

10. Section 24.3 (d) (2) (A) – *Distance between buildings* – The Ordinance states, "A detached ADU must be located no less than five feet from the primary dwelling unit on-site." However, State ADU Law prohibits the application of conflicting development standards to statewide exemption ADUs.² For other ADUs, the distance between buildings requirements may be applied, but those requirements are not specifically cited in the Ordinance, which creates confusion for people who are unfamiliar with the City's zoning code. Therefore, the City must amend the Ordinance to note that statewide exemption ADUs approved under section 66323 are exempt from distance between buildings requirements.

¹ Gov. Code § 66313, subd. (i).

² Gov. Code, § 66323, subd. (b).

11. Section 24.3 (d) (2) (C) – *Reverse Corner Lots* – The Ordinance states, “On reverse corner lots, a detached ADU may not project beyond the inner line of the front yard required on the adjacent lot to the rear, nor be located less than four feet from the side lot line of such adjacent lot.” However, “reverse corner setbacks” is a term that does not appear in State ADU Law. Government Code section 66314, subdivision (d)(7) requires “a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure...” Therefore, for any lot line that is not the front, no more than four-foot setbacks may apply. The City must amend the Ordinance to properly apply four-foot side and rear setbacks.
12. Section 24.3 (d) (3) (A), Section 24.3 (f) (4) (A) – *Height* – The Ordinance states, “A one-story detached ADU may be up to 16 feet in height, for both single family and multi-family.” However, Government Code, section 66321, subdivision (b)(4) states that height limitations must be prescribed no lower than 16, 18, 20 or 25 feet under certain specified conditions. The City must amend the Ordinance to reflect the height limits provided in State ADU Law.
13. Section 24.3 (e) (2), Section 24.3 (f) (2) – *Multifamily Unit Allowance* – The Ordinance states, “No more than one interior multi-family ADUs and no more than two detached ADUs shall be permitted within an existing, lawfully created multi-family residential structure.” However, Government Code section, subdivision 66323, subdivision (a)(3)(A), states, “ADUs may be created within the portions of existing multifamily structures that are not used as livable space.” Government Code section, 66323, subdivision (a)(b)(3), states “local agencies shall allow at least one ADU within an existing multifamily dwelling and up to 25 percent of the existing multifamily dwelling units.” In addition, Government Code section 66323, Subdivision (a)(4)(A)(ii), allows for “...up to 8 detached ADUs to be created on a lot with an existing multifamily dwelling, provided that the number of ADUs does not exceed the number of existing units on the lot, and up to 2 detached ADUs on a lot with a proposed multifamily dwelling.” The City must amend the Ordinance to allow all ADU combinations described in Government Code section 66323.

The City has two options in response to this letter.¹³ 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 to 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

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).

Carlos de Melo, Director of Community Development.

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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 Reshma Sen at Reshma.Sen@hcd.ca.gov if you have any questions.

Sincerely,

Jamie Candelaria

Jamie Candelaria
Section chief, ADU Policy
Housing Policy Development Division