

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

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



May 20, 2024

Viviana Esparza, Acting Director  
Economic Development and Planning Department  
City of Commerce  
2535 Commerce Way  
Commerce, CA 90040

Dear Viviana Esparza:

**RE: Review of City of Commerce'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) Laws have been re-numbered (Enclosure 1).

Thank you for submitting the City of Commerce's (City) ADU Ordinance No. 761 (Ordinance), adopted August 4, 2020, to the California Department of Housing and Community Development (HCD). The Ordinance was received on August 4, 2020. 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 June 20, 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. Section 19.07.090 B.3, B.5.a.iv and B.5.b.i. – *Height* – The Ordinance states that the height limitation for ADUs is 16 feet. However, ADU statute restricts local agencies from requiring the height of attached and detached ADUs, to be less than either 16, 18, 20 or 25 feet pursuant to Government Code section 66321, subdivision (b)(4). The City must amend the Ordinance to allow for the minimum height requirements in State ADU Law.
2. 19.07.090 B.5 a.i.-iv. – *Unit Allowance* – The Ordinance states, “Low Density Residential Zone (R-1). The number of accessory dwelling units or junior accessory units that may be located on any lot in the low-density residential zone is limited to one (1) of the following options...(i) through (iii).” It then allows “iv. One (1) junior accessory dwelling unit under B.5.a.iii above, plus one (1) detached new

construction accessory dwelling unit under subsection B.5.A.ii above, may be located on lots which contain or are proposed to be developed with a single-family dwelling; provided that the accessory dwelling unit shall be no more than eight hundred ( 800) square feet in floor area, no more than sixteen (16) feet in height, and have at least four (4) foot side and rear yard setbacks.” This limits ADUs to one per lot and only allows a JADU to be created in combination with a detached ADU.

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 by right ADU types permitted indicates that any of these ADU types can be combined on a lot zoned for single-family dwellings.

Limiting single-family lots to one ADU would prevent property owners from creating ADUs by-right under subdivision (a). Limiting the number of ADUs developable on a lot to one is inconsistent with State ADU Law. The City must amend the Ordinance accordingly.

3. Section 19.07.090 B.6. and B.7.a. – *Bedroom Limitation* – The Ordinance states, “Accessory dwelling units can be either 1 or 2 bedrooms, and junior accessory dwelling units shall be limited to a maximum of one (1) bedroom.” The Ordinance also later states, “All newly constructed detached 1-bedroom accessory dwelling units shall not exceed 850 square feet, and 2-bedroom accessory dwelling units shall not exceed 1000 square feet.” However, limiting the number of bedrooms within an ADU may constrain housing choice and result in discriminatory effects on families with children, people with disabilities, and other protected groups in violation of state and federal fair housing laws, including but not limited to Government Code section 65008, subdivisions (a)(1)(A) and (b)(1)(B)(i).

Additionally, local design standards provided by the Ordinance pursuant to Government Code sections 66314 to 66322, may not preclude a unit built subject Government Code section 66323, subdivision (a). The City must note the exception or remove the section.

4. Section 19.07.090 B.7.c. – *Dwelling Size* – The Ordinance states, “Accessory dwelling units located within existing multi-family dwellings shall not exceed 850 square feet and shall be larger than 500 square feet.” However, local design standards such as minimum and maximum sizes provided by the Ordinance

pursuant to Government Code section 66314 may not preclude a unit built subject to section 66323, which includes all converted units within multifamily primary dwellings. Therefore, no size restrictions may preclude a unit created in non-livable space in an existing multifamily building. Government Code section 66313, subdivision (a)(1) defines an ADU as an efficiency unit. An efficiency unit is defined in Section 17958.1 of the Health and Safety Code which allows for a minimum 150 square feet.<sup>1</sup> Therefore, the City must amend the Ordinance to comply with State ADU Law.

5. Section 19.07.090 B.7.d. – *Attached ADU Size Restrictions* – The Ordinance states, “When an accessory dwelling unit is attached to an existing single-family dwelling, the maximum allowed size of the accessory dwelling unit shall be the smaller of: 50% of the existing primary dwelling, or 850 square feet.” 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.” The Ordinance violates State ADU Law when calculating 50% of the existing primary dwelling would result in an ADU less than 800 square feet. Therefore, the City must amend the Ordinance to comply with State ADU Law.
6. Section 19.07.090 B.9. – *Parking* – The Ordinance includes all required parking regulations required by Government Code section 66322, subdivisions (a)(1) through (a)(5), but omits the conditions described under (a)(6): “The local agency shall not impose any parking standards for an accessory dwelling unit...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.” Therefore, the City must revise the Ordinance to comply with State ADU Law.
7. Section 19.07.090 B.14. – *Fire Sprinklers* – The Ordinance states, “Fire sprinklers are not required for the accessory dwelling unit or junior accessory dwelling unit if they are not required for the primary residence or multi-family dwelling.” However, Government Code section 66314, subdivision (d)(12) adds that, “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 comply with State ADU Law.

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<sup>1</sup> Gov. Code, § 66313, subds. (a)(1), (c).

8. Section 19.07.090 B.15 and 16 b. – *Owner Occupancy* – The Ordinance states, “One of the units on lots with a single-family dwelling shall be occupied as the primary residence of the owner of the lot. If the owner occupies neither unit, the accessory dwelling unit shall not be used as a dwelling unit, and shall not be rented. Notwithstanding the foregoing, an accessory dwelling unit that is approved after January 1, 2020, but before January 1, 2025, is not subject to the owner-occupancy requirement.” It later states, “The accessory dwelling unit shall be considered legal only so long as either the primary residence, or the accessory dwelling unit, is occupied by the owner of record of the property; provided that, an accessory dwelling unit that is approved after January 1, 2020, but before January 1, 2025, is not subject to the owner-occupancy requirement.” However, Government Code section 66315 removed owner occupancy requirements for ADUs. Therefore, the City must remove these sections from the Ordinance.
9. Section 19.07.090 B.16. – *Deed Restrictions* – The Ordinance states, “Before obtaining a building permit for an approved accessory dwelling unit, the property owner shall file with the County Recorder a declaration or agreement to restrictions, containing a reference to the deed under which the property was acquired by the owner....” However, Government Code section 66315 states, “Section 66314 establishes the maximum standards that local agencies 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 this subdivision, shall be used, or imposed....” As section 66314 does not require a deed restriction for a building permit, this section of the Ordinance is not consistent with State ADU Law. Therefore, the requirement of a deed restriction may not be the basis of delay or deny an ADU application and the issuance of a building permit. Therefore, the City must amend the Ordinance to remove this section.
10. Section 19.07.090 B.16.a. – *Separate Sale* – The Ordinance states, “The accessory dwelling unit cannot be sold separately from the primary residence....” However, Government Code section 66341 requires that local jurisdictions “shall allow an accessory dwelling unit to be sold or conveyed separately from the primary residence...” if, among other restrictions, the unit was developed by a qualified nonprofit corporation. Furthermore, section 66342 gives local jurisdictions the option of governing separate sale pursuant to the Stirling-Davis Common Interest Development Act. Therefore, the City must amend the Ordinance to provide for the requirements of section 66341 and may consider a separate ordinance per section 66342.
11. Section 19.07.090 B.17.a. – *JADUs and Owner Occupancy* – The Ordinance states, “The owner of the single-family lot shall occupy the single-family dwelling or the junior accessory dwelling unit.” However, Government Code section 66333, subdivision (b) states, “Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.” Therefore, the City must amend the Ordinance to note the exception.

12. Section 19.07.090 B.17.b.3. – *JADU Terms* – The Ordinance states, “Minimum rental term shall be no less than 30 days....” Government Code section 66323, subdivision (d) states, “A local agency shall require that a rental of the *accessory dwelling unit* created pursuant to this subdivision be for a term longer than 30 days.” The statute specifically applies the requirement only to ADUs and not JADUs Therefore, the City must amend the Ordinance to comply with State ADU Law.
13. Section 19.07.090 B.17.c. – *JADUs and Bathrooms* – The Ordinance states, “The requirements and standards of this subsection shall apply to junior accessory dwelling units, notwithstanding anything contrary in this section...” but omits reference to sanitation facilities. Government Code section 66333, subdivision (e)(2) requires 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.” Therefore, the City must amend the Ordinance to allow for a shared bathroom and internal entry to the main living area and comply with State ADU Law.
14. Section 19.07.090 B.17.c. – *Counter Sizes* – The Ordinance requires, “...a food preparation counter or counters that total at least eight (8) square feet in area and food storage cabinets that total at least sixteen (16) square feet of shelf space.” However, Government Code Section 66333, subdivision (f)(2) requires, “A food preparation counter and storage cabinets that are **of reasonable size** in relation to the size of the junior accessory dwelling unit.” The Ordinance is more restrictive given that State ADU Law does not specify sizes . Therefore, City must amend the Ordinance accordingly.
15. Section 19.07.090 C. – *Application Denial* – The Ordinance states, “Where all requirements of this section and the Commerce Municipal Code appear to be met, the application shall be approved ministerially without discretionary review or public hearing within sixty (60) days of receiving the application.” However, 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,” and subdivision (b) requires, “If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subdivision (a), the permitting agency shall, within the time period described in subdivision (a), 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.” The City must amend the Ordinance to provide a process when an ADU application is denied.

In response to the findings in this letter, and pursuant to Government Code section 66326, subdivision (b)(2), the City must either amend the Ordinance to comply with

State ADU Law or adopt the Ordinance without changes. Should the City choose to adopt the Ordinance without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinance complies with State ADU Law despite the findings made by HCD. Accordingly, the City's response should provide a plan and timeline to bring the Ordinance into compliance.

Please note that, pursuant to Government Code section 66326, subdivision (c)(1), if the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD may notify the City and the California Office of the Attorney General that the City is in violation of State ADU Law.

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, of our staff, at [Mike.Vangorder@hcd.ca.gov](mailto:Mike.Vangorder@hcd.ca.gov).

Sincerely,



Jamie Candelaria  
Senior Housing Accountability Unit Manager  
Housing Policy Development Division