

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

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October 9, 2024

Dustin Rief, City Manager
City of Dunsmuir
5915 Dunsmuir Avenue
Dunsmuir, California 96025

Dear Dustin Rief:

**RE: Review of City of Dunsmuir'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 Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) Law have been re-numbered (Enclosure 1).

Thank you for submitting the City of Dunsmuir (City) accessory dwelling unit (ADU) Ordinance No. 575 (Ordinance), adopted June 29, 2023, to the California Department of Housing and Community Development (HCD). The Ordinance was received on July 7, 2023. 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 November 8, 2024.

The Ordinance addresses many statutory requirements; however, HCD finds that the Ordinance fails to 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 code sections.
2. Section 17.116.020 B and 17.116.040 E – *Entrance* - The Ordinance defines JADU as a unit that may “include separate sanitation facilities or may share sanitation facilities with the existing structure.” It later states “permitted junior accessory dwelling unit may include an interior entry to the main living area and may include a second interior doorway for sound attenuation.”

However, this omits reference to the requirements stated in Government Code section 66333, subdivision (e)(2): “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.” The City must amend the Ordinance to include the instance when an interior entry is required.

3. Section 17.116.030 A.1 – *Zoning* – The Ordinance states, “Accessory dwelling units are permitted by right in all zoning districts that allow single family residential and multifamily residential as a principally permitted use.” This language appears to allow ADUs *only* where zoning allows *both* single family and multifamily residential uses. However, Government Code section 66314, requires that local ordinances “provide for the creation of accessory dwelling units in areas zoned to allow single-family *or* multifamily dwelling residential use.” Therefore, the Ordinance must be amended to indicate that ADUs are permitted in zones that allow single-family *or* multifamily dwelling residential use.
4. Section 17.116.030 B.1 and 17.116.040 B. – *Unit Mixture* – The Ordinance states that for single-family primary lots, “No more than one (1) accessory dwelling unit and one (1) junior accessory dwelling unit shall be located on the same parcel improved with a single-family dwelling.” It later requires that “In no case shall more than one (1) accessory dwelling unit and one (1) junior accessory dwelling unit be placed on the same lot or parcel.”

Government Code section 66323 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.” Subparagraph (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 section.

Limiting single-family lots to one ADU would prevent property owners from creating ADUs by-right under section 66323. Therefore, the City must amend the Ordinance to allow for all by-right ADU combinations.

5. Section 17.116.030 C – *Owner Occupancy* – The Ordinance states, “Owner occupancy of a dwelling on the property is not required between January 1, 2020 and January 1, 2025. Thereafter, owner-occupancy shall be required in one (1) of the dwellings.” 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...” Therefore, the City must remove all references to an owner occupancy requirement for ADUs.
6. Section 17.116.030 E.1.a and b – *Size Maximums* – The Ordinance states, “The floor area of the accessory dwelling unit shall not exceed: a. Parcels sized ten thousand (10,000) square feet or greater: One thousand two hundred (1,200) square feet. b. All other parcels: Eight hundred and fifty (850) square feet for a studio or one bedroom accessory dwelling unit, or one thousand (1,000) square feet for an accessory dwelling unit that provides for more than one (1) bedroom.” However, this section is introduced with a reference to “conversion of an attic, basement, garage, or other portion of an existing residential unit... [or] of an accessory structure...” This language would restrict the size of any unit created out of converted existing space. This section of the Ordinance is misleading and fails to reflect ADU Law which provides that 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; total floor area for a detached ADU shall not exceed 1,200 square feet.

Additionally, local design standards provided by the Ordinance pursuant to Government Code sections 66310 through 66322 may not preclude any unit created subject to section 66323. Therefore, the City must amend this section of the Ordinance to accurately reflect ADU Law.

7. Section 17.116.030 E.4.a, E.6 – *Subjective Term* – The Ordinance states, “Accessory dwelling units shall be substantially compatible with the principal dwelling and the neighborhood.” The term “substantially compatible” appears again in subsection E.6. Government Code section 66314, subdivision (b)(1) requires local ADU ordinances to apply “objective standards on accessory dwelling units”, and section 66313, subdivision (h) states ““Objective standards” means standards that 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.” The use of the subjective term “substantially compatible” in the Ordinance is inconsistent with

State ADU Law. The City must amend the Ordinance to remove the term “substantially compatible”.

8. Section 17.116.030 E.4.b – *Architecture* - The Ordinance states, “For accessory dwelling units located within the required setbacks of the primary residence, all windows along the wall facing the adjoining property line within the required setback shall be clerestory (minimum of five (5) feet, six (6) inches sill height above the finished floor) or shall have permanently obscured glazing. Windows that vary from this standard may be allowed with written approval from the adjacent property owner that faces the window(s).” Although an adopted ADU Ordinance may allow a local agency to develop or establish certain objective development standards, those standards may not exceed standards contained within ADU statute or impede the creation of ADUs. Government Code section 66316 requires that jurisdictions “provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units...” Subjective terms such as “clerestory” and “permanently obscured glazing” violate State ADU Law.

Additionally, 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...” Written approval of any variation from the adjacent property owner is also a subjective process in violation of State ADU Law. Therefore, the City must amend the Ordinance to remove this requirement and all subjective standards.

9. Section 17.116.030 E. 5 – *Setbacks* – The Ordinance states, “An accessory dwelling unit attached to the primary residence shall be subject to the same minimum side, front, and rear setback requirements as the primary residence.” It later requires “A setback of no more than five (5) feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.” However, Government Code section 66314, subdivision (d)(7) states “No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and 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 or a new structure constructed in the same location and to the same dimensions as an existing structure.” For this reason, conversions are not subject to any setbacks, and all other ADUs are subject to no more than four feet front and side setbacks.

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.” For this reason, the application of front setbacks may not preclude a unit 800 square feet or smaller.

Therefore, the City must amend the Ordinance so that the application of setbacks in the underlying zoning accurately reflects State ADU Law.

10. Section 17.116.030 (E)(8) – *Separate Sale* - The Ordinance states, “The accessory dwelling unit shall not be sold separately from the primary dwelling unless the existing lot is divided into two or more lots consistent with city lot dimension and lot area standards resulting in the primary and accessory residential structures being on individual lots. Full separate utility connections for all habitable structures shall be a requirement of approval of the lot division.” However, Government Code section 66313, subdivision (a) 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...” An accessory residential structure cannot be on a separate lot from the primary dwelling.

Additionally, please note that Government Code section 66341 creates a narrow exception to allow separate conveyance of an ADU to a qualified buyer if the property was built or developed by a qualified nonprofit corporation, among other provisions of the statute, and Government Code section 66342 gives local jurisdictions the option of adopting an Ordinance to govern the separate sale of ADUs from their primary dwelling. Therefore, the City must amend the Ordinance to omit the requirement that the primary and accessory structures be on separate lots, and state that a separate conveyance may be allowed if all conditions of Government Code Section 66341 are met.

11. Section 17.116.030 E. 13 – *Parking* – The Ordinance waives parking requirements in instances set forth in Government Code section 66322, subdivisions (a)(1) through (a)(5). However, it omits reference to subdivision (a)(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.” Therefore, the City must amend the Ordinance to add the additional instance.

12. Section 17.116.030 F – *Application Procedure* - The Ordinance states, “City clerk, or designee, approval shall be required for all accessory dwelling units. The property owner shall file a complete building permit application and pay all applicable fees. The completed application form shall include, but not be limited to, data on the floor space and height of the proposed unit and the existing residential unit(s), a photograph of the existing residential unit(s), and an accurately drawn site plan showing the location and size of all existing and proposed structures, the proposed accessory dwelling unit, setbacks, utility connections, and vehicle parking.”

Government Code section 66317, subdivision (a) requires that “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 if there is an existing single-family or multifamily dwelling on the lot...” Subdivision (b) states “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 Ordinance fails to clearly state what constitutes a completed application, leaving applicants without certainty, objectivity and at the unlawful discretion of the City. The phrase “shall include, but not be limited to...” is not consistent with the objective clear standards required by ADU Law. (Government Code section 66314, subdivision (b)(1)). Therefore, the City must amend the Ordinance to comply with State ADU Law.

13. Section 17.116.030 G – *Unpermitted ADUs* – The Ordinance states, “The city clerk may approve an accessory dwelling unit constructed without benefit of required permits; provided, that the unit conforms to the current building code, is subject to applicable current permit and impact fees, and conforms to setback, height, area, and other physical development standards otherwise applicable.” However, Government Code section 66332, subdivision (a) states “Notwithstanding any other law, and except as otherwise provided in subdivision (b), a local agency shall not deny a permit for an unpermitted accessory dwelling unit that was constructed before January 1, 2018, due to either of the following: (1) The accessory dwelling unit is in violation of building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code. (2) The accessory dwelling unit does not comply with this article or any local ordinance regulating accessory dwelling units.” Therefore, the City must amend the Ordinance to reflect the exceptions to comply with State ADU Law.

14. Section 17.116.030 J – *Sprinklers* – The Ordinance states, “The installation of fire sprinklers shall not be required in an accessory dwelling unit if they are not required for the primary residence (unless otherwise required by the fire chief based on state law).” However, Government Code section 66314, subdivision (d)(12) and section 66323, subdivision (c) both further clarify and expand on this to require that “The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing multifamily dwelling.” Therefore, the City must omit the reference to the fire chief’s additional review and amend the Ordinance to comply with State ADU Law.

15. Section 17.116.040 D – *Attached Garages* – The Ordinance states, “A junior accessory dwelling unit shall be located within the walls of an existing or proposed single-family residence.” However, Government Code section 66333, subdivision (d) expands on this to state “For purposes of this paragraph, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” Therefore, the City must amend the Ordinance to include an attached garage as part of the single-family residence, reflecting State ADU Law.

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 our staff, Mike VanGorder, at Mike.Vangorder@hcd.ca.gov if you have any questions.

Sincerely,



Jamie Candelaria
Senior Housing Accountability Manager
Housing Policy Development Division

Enclosures

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)