

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

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September 5, 2024

John Smith, Acting Director
Community Development Department
City of Fort Bragg
416 North Franklin Street
Fort Bragg, CA 95437

Dear John Smith:

RE: Review of Fort Bragg'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).

Thank you for submitting the City of Fort Bragg (City) ADU Ordinance No. 985-2024 (Ordinance), adopted March 25, 2024, to the California Department of Housing and Community Development (HCD). The Ordinance was received on May 20, 2024. 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. 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 October 5, 2025.

Some parts of this Ordinance reference provisions of SB 9 (Chapter 162, Statutes of 2021). However, SB 9 compliance is not a part of this review.

The Ordinance addresses many statutory requirements; however, HCD finds that the Ordinance fails to comply with State ADU Law as follows:

1. Various sections – *Government Code References* – The Ordinance includes references to Government Code sections 65852.2 and 65852.22¹. However, SB 477 deleted these code sections and relocated the statutory language, effective March 25, 2024. Updating the Government Code references will help avoid confusion for City staff and the public. The enclosure at the end of this letter is a

¹ Two of these references contain the typo "65952".

table showing the new code sections² and the corresponding deleted code sections. Therefore, the City must amend the Ordinance to reference the current Government Code sections of State ADU Law.

2. Section 1.6.c – *Parking Regulations* – The Ordinance states, “Parking and Traffic: In compliance with State law, the City Council may not require off-street parking for an ADU. In the case of a garage conversion to an ADU, the converted parking spaces do not have to be replaced.” However, “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”³ (emphasis added). The Ordinance exempts garage conversion ADUs from replacement parking requirements but does not exempt ADUs converted from covered parking structures, like carports. Therefore, the City must amend the Ordinance to exempt all ADUs converted from covered parking from replacement parking requirements.

While the City is not requiring parking for ADUs, it must allow off-street parking in certain areas. An ADU ordinance must require compliance with the following: “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.”⁴ The Ordinance does not include this language. Therefore, the City must amend the Ordinance to specify where off-street parking is allowed in compliance with State ADU Law quoted above.

3. Sections 18.22.030(C), Table 2-6 & 18.100 – *Second Unit* – The Ordinance uses the term “second unit” as a synonym for an ADU or a JADU. However, State ADU Law was amended in 2016 to replace the term “second unit” with “accessory dwelling unit”⁵. Continuing to use the term “second unit” as a synonym for an ADU or JADU creates confusion because this terminology is not aligned with State ADU Law and because State ADU Law typically allows more than one ADU on a given property. The term “second unit” is now more commonly associated with authorizing and approving the construction of two residential units, sometimes referred to as “second primary units” pursuant to SB 9 (Chapter 162, Statutes of 2021). Therefore, the City must amend the Ordinance to delete the term “second unit” when referring to an ADU or a JADU and replace it with the respective statutory term – accessory dwelling unit or junior accessory dwelling unit.

² Government Code sections 66310-66342.

³ Gov. Code, § 66314, subd. (d)(11).

⁴ Gov. Code, § 66314, subd. (d)(10)(B).

⁵ SB 1069, Chapter 720, Statutes of 2016.

4. Section 18.22.030(C), Table 2-6, Footnote (5) – *Primary Units* – The Ordinance notes the following for ADUs and JADUs in commercial zones: “Use permitted only on parcels with existing single residential units or existing/proposed multifamily development, and only in compliance with § 18.42.170.” However, an ADU Ordinance shall require that “The accessory dwelling unit is either attached to, or located within, the **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”⁶ (emphasis added). The Ordinance does not allow ADUs with proposed single-family primary dwellings. Furthermore, State JADU Law does not allow a JADU on a property with a multifamily primary dwelling structure.⁷ The Ordinance allows JADUs with multifamily primary dwelling structures. Therefore, the City must amend the Ordinance to allow ADUs with existing or proposed primary dwellings and to disallow JADUs on properties with a multifamily dwelling structure.
5. Sections 18.21.050, Table 2-4 & 18.42.170.C – *ADU and JADU Combinations* – Section 18.21.050, Table 2-4 states in the RR, RS and RL zones the maximum density is: “1 dwelling unit or one duplex per parcel; or 1 dwelling Unit and one second unit and one JADU where allowed by 18.42.170.” Section 18.42.170.C.1 limits a lot with an existing or proposed single-family dwelling to one JADU and/or one ADU. Section 18.42.170.C.2 limits a lot with an existing multifamily dwelling to interior ADUs equal to the greater of one or 25 percent of the number of primary units and one 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 means that any of these ADU types can be combined on a lot zoned for single family dwellings.

This permits a homeowner, who meets the specified requirements of this section, to create one converted ADU; one detached, new construction ADU;

⁶ Gov. Code, § 66314, subd. (d)(3).

⁷ Gov. Code, § 66333, subd. (a).

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 setback requirements pursuant to this section, 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 subdivision (a).

This section also applies to ADUs created pursuant to Government Code section 66323, subdivisions (a)(3) and (a)(4), on lots with proposed or existing multifamily dwellings. Subdivision (a)(4) allows for two detached ADUs, whereas the Ordinance only allows for one. Limiting single-family or multifamily lots as the Ordinance does, would prevent property owners from creating ADUs by-right under subdivision (a).

Therefore, the City must amend the Ordinance to allow the combinations of ADUs described in Government Code section 66323, subdivision (a). Namely, 1) one conversion ADU, one JADU and one detached ADU on a single-family lot and 2) conversion ADUs⁸ and two detached ADUs on a multifamily lot.

6. Section 18.42.170 – *ADU Definition* – The Ordinance defines an ADU as, “...an attached, detached or converted residential dwelling unit that provides complete independent living facilities for one or more persons. ADUs shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single residential unit or multifamily dwelling structure. An "Accessory Dwelling Unit" also includes the following: an efficiency unit or a manufactured home, as defined in Section 18007 of the Health and Safety Code.” However, State ADU Law defines an ADU differently because it includes the requirement that an ADU be “on a lot with a proposed or existing primary residence.”⁹ The Ordinance is missing this requirement. Therefore, the City must amend the definition to include the requirement that an ADU be on a lot with a proposed or existing primary residence.
7. Section 18.42.170 – *JADU Definition* – The Ordinance defines a JADU as, “...a living space not more than 500 square feet in size and contained entirely within the walls of a single residential unit. A JADU shall include permanent provisions for living, sleeping, eating, cooking, and sanitation (sanitation facilities may be separate, or may be shared with the primary unit).” However, Government Code section 66313, subd. (d) defines a JADU as “a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.” These definitions differ in

⁸ The Ordinance correctly describes the number of multifamily conversion ADUs allowed.

⁹ Gov. Code, § 66313, subd. (a).

key ways. The Ordinance allows a JADU in a “single residential unit” which could be interpreted as a unit in a multifamily dwelling structure, whereas State JADU Law says a JADU must be within a “single-family residence.” The Ordinance requires sanitation facilities in a JADU and then immediately notes that they are not required if included in the single-family residence. Therefore, the City must amend the definition to reflect State JADU Law.

8. Section 18.42.170 – *Review Deadline* – The Ordinance states, “An application for the creation of an ADU or JADU shall be deemed approved (not just subject to Ministerial Approval) if the City has not acted on the completed application within 60 days. (65852.2a3).” However, “If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing.”¹⁰ State ADU Law does not deem an ADU application approved after 60 days when the primary dwelling is proposed. Therefore, the City should amend the Ordinance to note this exception and must amend the Ordinance to correct the reference to the Government Code (see Footnote 10).
9. Section 18.42.170 – *Subdivision Lettering* – The Ordinance divides section 18.42.170 into various subdivisions designated by capital letters (A, B, C, etc.). However, the letters run contrary to alphabetical order in some places. Subdivision C is followed by subdivision A and then a second subdivision C. These errors appear to have been corrected when the ordinance was added to the Municipal Code. The City must ensure that all such corrections are done via an ordinance.
10. Section 18.42.170 – *Missing Required Standards* – The Ordinance is missing certain standards State ADU Law requires it to include. An ADU ordinance shall “Require that a demolition permit for a detached garage that is to be replaced with an accessory dwelling unit be reviewed with the application for the accessory dwelling unit and issued at the same time.”¹¹ A JADU ordinance shall: “Require owner-occupancy in the single family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another

¹⁰ Gov. Code, § 66317, subd. (a). This is the correct Government Code section to refer to.

¹¹ Gov. Code, § 66314, subd. (e).

governmental agency, land trust, or housing organization.”¹² An ADU ordinance shall require compliance with: “Local building code requirements that apply to detached dwellings, except that the construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code (Title 24 of the California Code of Regulations), unless the building official or enforcement agency of the local agency makes a written finding based on substantial evidence in the record that the construction of the accessory dwelling unit could have a specific, adverse impact on public health and safety. Nothing in this paragraph shall be interpreted to prevent a local agency from changing the occupancy code of a space that was uninhabitable space or was only permitted for nonresidential use and was subsequently converted for residential use pursuant to this article.” Therefore, the City must amend the Ordinance to include the omitted required statutory standards described in this paragraph.

11. Section 18.42.170.C.2.a – *Conversion ADU Size* – The Ordinance states multifamily interior ADUs “shall not exceed 1,200 square feet in floor area.” However, “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.”¹³ While State ADU Law does not limit the City’s ability to adopt less restrictive standards on ADUs¹⁴, the 50 percent standard, or a standard based on a less restrictive percentage of the primary dwelling area, must be used. When the primary multifamily dwellings vary in floor area, the City may use the median of the primary unit floor areas as the basis for the 50 percent calculation. Therefore, the City must amend the Ordinance to incorporate the requirement that an attached ADU’s floor area not exceed 50 percent, or a less restrictive percentage, of the primary unit floor area.
12. Sections 18.42.170.C.2.b & 18.42.170.J.2.b – *ADU Height Limits* – Section 18.42.170.C.2.b of the Ordinance states a detached ADU may be “no taller than 16 feet.” Section 18.42.170.J.2.b of the Ordinance states: “A detached ADU shall be limited to a maximum height of 16 feet. Second story ADUs are permitted only over a garage and are limited to 28 ft in height.” Government Code section 66321, subdivision (b)(4) describes four scenarios for the allowable detached or attached ADU height. The relevant height limits are explicitly incorporated into Government Code section 66323, subdivision (a)(4), which requires local agencies to ministerially approve two multifamily detached ADUs. Two of the three detached ADU height examples allow heights **greater** than 16 feet, based on proximity to certain transit stops or the presence of a multifamily multistory dwelling structure on the property. There is no basis in State ADU Law for the City to limit attached ADUs to be located above a

¹² Gov. Code, § 66333, subd. (b).

¹³ Gov. Code, § 66314, subd. (d)(4).

¹⁴ Gov. Code, § 66325, subd. (b).

garage. Therefore, the City must amend the Ordinance to acknowledge all the detached ADU height limits in Government Code section 66321, subdivision (b)(4) and to allow an attached ADU to be attached to the primary dwelling, not just a garage.

13. Section 18.42.170.C.2.c – *ADU Rental Restriction* – The Ordinance states: “ADU and JADUs are permitted within condominiums as rentals or homeowner-occupied units, however, no less than 25% of all ADUs in condominiums must be rented.” Government Code 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.¹⁵ There is absolutely no basis in State ADU Law to require that a minimum percentage of ADUs in a condominium development be rented. Therefore, the City must amend the Ordinance to remove the requirement a minimum percentage of ADUs in a condominium development be rented.
14. Section 18.42.170.A¹⁶ – *Development Standards on Conversion ADUs* – The Ordinance states, “The conversion of a pre-existing (pre-existing prior to the date of the adoption of the ordinance) accessory structure (garage, barn, shed, etc.) or portion of an existing accessory structure to an ADU is not subject to size limits, setback or height limitations of this ordinance. However, 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.”¹⁷ The exemption from setback requirements applies regardless of the date the structure being converted was built. The structure need not have existed prior to the date this Ordinance was adopted. Therefore, in the context of setback requirements, the City must amend the Ordinance to remove the condition that the structure being converted to an ADU existed prior to the date the Ordinance was adopted.

¹⁵ Gov. Code, § 66315.

¹⁶ This refers to the second instance of subdivision “A” of section 18.42.170. See the “Subdivision Lettering” finding above.

¹⁷ Gov. Code, § 66314, subd. (d)(7).

15. Section 18.42.170.A¹⁸ – *Typo* – The last two lines of this paragraph exactly match the previous two lines in the same paragraph: “...subject to size limits, setback or height limitations of this ordinance. ADUs proposed for accessory structures that are expanded in size by more than 150 SF are subject to the size limitations of this ordinance.” The City should amend the Ordinance to delete the duplication.
16. Section 18.42.170.D – *Minimum Lot Size* – The Ordinance states, “There is no minimum lot size for ADUs **and** JADUs” (emphasis added). However, this could be read as only applying to a property with both an ADU and a JADU. It would be more accurate to write that there is no minimum lot size for ADUs **or** JADUs. Therefore, the City should amend the Ordinance to clarify.
17. Section 18.42.170.F – *Timing* – The Ordinance states, “An ADU may be constructed before, with, or after the primary dwelling unit(s).” State ADU Law is clear that “A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.”¹⁹ While it is true that an ADU may be built concurrently with the primary dwelling, the Ordinance implies an ADU may be completed and receive a certificate of occupancy before the primary dwelling, which is incorrect and counter to the intent of ADU law. Therefore, the City must amend the Ordinance to clarify that the primary dwelling must receive a certificate of occupancy before the ADU.
18. Section 18.42.170.G – *Sale of ADUs and JADUs* – This subdivision of the Ordinance begins with the heading “Sale of ADUs JADUs” and describes a situation in which an ADU may be sold separately from the primary residence. However, State JADU Law requires the JADU deed restriction to include, “A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.”²⁰ The Ordinance’s heading creates confusion by implying that JADUs may be sold separately, even though State JADU Law prohibits it. Therefore, the City must amend the Ordinance to delete “JADUs” from this heading or to directly state that JADUs may not be sold separately from the primary residence.
19. Section 18.42.170.I – *Deed Restriction* – The Ordinance states, “Prior to the issuance of a building permit for an ADU, the owner shall record a deed restriction in a form approved by the City that includes: 1) a prohibition on the sale of the ADU separate from the sale of the primary residential unit (except in

¹⁸ This refers to the second instance of subdivision “A” of section 18.42.170. See the “Subdivision Lettering” finding above.

¹⁹ Gov. Code, § 66328.

²⁰ Gov. Code, § 66333, subd. (c)(1).

the case of H above or Urban Lot Split (18.84.045); 2) a prohibition on short-term rentals, and; 3) in the case of a JADU restricts the size and attributes of the JADU to conformance with this section.” However, as noted above, ADUs may not be subjected to local standards not listed in Government Code section 66314.²¹ Furthermore, as discussed in the previous finding, “*Sale of ADUs and JADUs*”, a deed restriction is required for a JADU, and it must state that the JADU may not be sold separately from the primary residence.²² A deed restriction requirement is not allowed for an ADU. A deed restriction is required for a JADU, but it must include the contents specified in State JADU Law. Therefore, the City must amend the Ordinance to remove the ADU deed restriction requirement and fully align with Government Code section 66333, subdivision (c) on the required contents of the JADU deed restriction.

20. Section 18.42.170.J.1 – *Exceptions from Development Standards* – The Ordinance states, “Exceptions to Accommodate at least one 800 SF ADU and one JADU. The Community Development Director shall modify or eliminate objective development standards if they prevent the construction of a JADU and/or an ADU of at least 800 square feet in size, and 16 feet in height with 4-foot setbacks on any lot. Objective development standards shall be modified with the following to be considered last to allow an 800 SF unit: changes to parking requirements, front setbacks, and/or height limits.” This paragraph is misleading and inconsistent with State ADU Law. JADUs are limited to 500 square feet or less by definition.²³ A local agency shall not establish by ordinance, “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 is ambiguous regarding whether development standards other than parking requirements, front setbacks or height limits would be waived. Height limits are governed by another section of State ADU Law and ADU heights greater than 16 feet are allowed in multiple scenarios described therein.²⁴ Therefore, the City must amend the Ordinance to correct the following: 1) remove the reference to JADUs larger than 500 square feet, 2) acknowledge the framework of allowable height limits in State ADU Law, and 3) list the specific development standards that will be waived if necessary to accommodate an ADU of at least 800 square feet which is set back at least four

²¹ Gov. Code, § 66315.

²² Gov. Code, § 66333, subd. (c).

²³ Gov. Code, § 66313, subd. (d).

²⁴ Gov. Code, § 66321, subd. (b)(4). See “*Detached ADU Height Limits*” finding above.

feet from side and rear property lines, consistent with Government Code section 66321, subdivision (b)(3)..

21. Section 18.42.170.J.2.a – *ADU Location* – The Ordinance states, “An ADU can be (i) a remodeled portion of a primary dwelling unit; (ii) attached to a primary dwelling unit; (iii) one of the units of a duplex (iv) a detached unit or located in a converted Accessory Structure such as a shop or garage.” This is inconsistent with State Law which specifies that an ADU ordinance shall require that an ADU is “...either attached to, or located within, the 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.”²⁵ An ADU can be one of the units of a multifamily dwelling structure generally, not just one of the units of a duplex as misstated in the Ordinance. Therefore, the City must amend the Ordinance to recognize that an ADU can be one of the units in a multifamily dwelling structure.
22. Section 18.42.170.J.2.c – *Setbacks* – The Ordinance states, “...no setbacks are required for ADUs that are conversions of existing living areas or existing accessory structures, or for any new structures in the same location and to the same dimensions as an existing structure, or for expansions of existing structures that have less than a four-foot rear or side yard setback **so long as the expansion conforms with the existing structure's existing setback**” (emphasis added). However, for a single-family conversion ADU, the side and rear setbacks must be “sufficient for fire and safety,”²⁶ based on requirements of the California Building Standards Code and the type of construction. Therefore, the City must amend the Ordinance to reflect the requirement for setbacks sufficient for fire and safety.
23. Section 18.42.170.J.2.f – *Fire Sprinklers* – The Ordinance states, “Fire sprinklers shall not be required if they are not required for the primary residence.” However, “Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.”²⁷ The Ordinance does not reflect State ADU Law because it does not specify that fire sprinklers shall not be required for an ADU specifically and because it causes confusion by omitting that an ADU does not trigger the requirement for fire sprinklers in the primary dwelling. Therefore, the City must amend the Ordinance to reflect the fire sprinkler language in State ADU Law.

²⁵ Gov. Code, § 66314, subd. (d)(3).

²⁶ Gov. Code, § 66323, subd. (a)(1)(C).

²⁷ Gov. Code, § 66314, subd. (d)(12).

24. Section 18.42.170.J.3.a – *Typo* – In one instance this paragraph of the Ordinance refers to “JAUDs” where “JADUs” appears to be intended. The City should amend the Ordinance to correct this typo.
25. Section 18.42.170.J.3.c – *JADU Interior Entry* – The Ordinance states, “A JADU shall have a separate entrance from the main entrance to the primary residence.” While this is correct, State JADU Law continues, “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.”²⁸ The Ordinance ignores the requirement for an interior entry between the JADU and the single-family residence in this situation. Therefore, the City must amend the Ordinance to require an interior entry between the JADU and the single-family residence when the JADU does not have its own bathroom.
26. Sections 18.42.170.J.3.e & 18.42.170.J.3.f – *JADU Utility Connections* – Section 18.42.170.J.3.e of the Ordinance states, “No separate connection between the junior accessory dwelling unit and the utility shall be required for units created within a single residential unit unless the junior accessory dwelling unit is being constructed in connection with a new single residential unit.” Section 18.42.170.J.3.f of the Ordinance states, “For the purpose of providing service for water, sewer, or power, a JADU unit shall not be considered a separate or new unit, unless the JADU was constructed in conjunction with a new single residential unit.” The qualifying language of the Ordinance is inconsistent with Government Code section 66338 subdivision (a) which requires: “For purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit; and subdivision (b) which requires “This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation related to a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.” The Ordinance requires a separate utility connection, even though State JADU Law prohibits the JADU from being considered a separate or new dwelling unit for this purpose. This requirement is not uniform regardless of whether the single-family dwelling has a JADU, since two connections are being required instead of one: one for the primary single-family dwelling and a second for the JADU. Therefore, the City must amend the Ordinance to delete the requirement for separate JADU utility connections.
27. Section 18.42.170.K.2 – *JADU Replacement Parking* – The Ordinance states, “No replacement parking space(s) are required for the primary unit, when a

²⁸ Gov. Code, § 66333, subd. (e)(2).

garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an ADU.” While this is correct, “A junior accessory dwelling unit ordinance adopted pursuant to Section 66333 shall not require additional parking as a condition to grant a permit.”²⁹ The Ordinance is silent on JADU replacement parking. Therefore, the City must amend the Ordinance to state that replacement parking is not required when an attached garage is converted to a JADU.

28. Section 18.42.170.M – *Fees* – The Ordinance states, “ADUs of less than 750 SF shall be exempt from paying **capacity fees**, and units of more than 750 SF shall pay a prorated share of the capacity fee” (emphasis added). However, “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.”³⁰ The Ordinance uses the term “capacity fees” where State ADU Law refers to “**impact fees**” when exempting ADUs less than 750 square feet. Capacity fees and impact fees are different types of fees.³¹ The Ordinance creates confusion and does not state whether an ADU of exactly 750 square feet owes capacity fees, whereas in State ADU Law such an ADU may be subject to impact fees. Therefore, the City must amend the ordinance to 1) clarify that ADUs of less than 750 square feet are exempt from **impact fees** and 2) to distinguish between impact fees and capacity charges.³²

29. Section 18.42.170.O – *Grounds for Denial* – The Ordinance states, “No applicant shall be required to correct existing non-conforming zoning conditions as part of the creation or conversion of an ADU or JAUD [sic].” However, “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).³³ The Ordinance is missing the prohibition against denying approval of an ADU application for the two reasons in bold above. Therefore, the City must amend the Ordinance to state that it will not deny an ADU application due to 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.

30. Section 18.42.170.Q – *Covenants, Conditions and Restrictions* – The Ordinance states, “ADUs and JADUs shall be allowed on all parcels regardless of any covenants, conditions or restrictions that have been placed on a lot; such

²⁹ Gov. Code, § 66334, subd. (a).

³⁰ Gov. Code, § 66324, subd. (c)(1).

³¹ See the definition of “impact fee” at Gov. Code, § 66324, subd. (c)(2).

³² Gov. Code, § 66324 explains this distinction in more detail.

³³ Gov. Code, § 66322, subd. (b).

restrictions are void and unenforceable. (Civ Code 4751).” However, this sentence does not accurately reflect Civil Code section 4751, subdivision (a), which limits the effect of “Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Article 2 (commencing with Section 66314) or Article 3 (commencing with Section 66333) of Chapter 13 of Division 1 of Title 7 of the Government Code.” This misrepresentation creates confusion about which provisions apply. Therefore, the City should amend the Ordinance to delete this subdivision or replace it with the accurate text and/or reference to Civil Code section 4751.

31. Section 18.100 – *ADU and JADU Alternate Definitions* – The Ordinance provides alternate definitions of ADUs and JADUs. However, it defined these terms differently in Section 18.42.170 (see related finding “ADU Definition” above). The same terms should not be defined differently. State ADU Law provides definitions of the terms “ADU” and “JADU.”³⁴ Therefore, the City must amend the Ordinance to delete the contradictory definitions of ADU and JADU. The City may amend the Ordinance to replace the contradictory definitions with the statutorily correct definitions or a simple reference to the statutory sections..
32. Section 18.100 – *Multi-Family Housing Definition* – The Ordinance defines “multi-family housing” in part as, “A dwelling unit that is part of a structure containing three or more other dwelling units.” For purposes of State ADU Law a multifamily dwelling structure contains two or more attached dwellings.³⁵ The City may not restrict multifamily ADUs based on its current incorrect definition. Therefore, the City must amend the Ordinance to state that structures with two or more attached dwellings are considered multifamily dwelling structures for purposes of implementing State ADU Law.
33. Section 18.100 – *Primary Residential Unit Definition* – The Ordinance defines a “primary residential unit” in part as, “A house that is occupied and designed with one overall living area for one group of people with one kitchen.” State ADU Law specifies that the lot for the accessory dwelling unit is zoned to allow single or multifamily residential use and include a proposed or existing dwelling.³⁶ The Ordinance implies that a multifamily primary dwelling does not qualify a property for an ADU. Therefore, the City must amend the Ordinance to clarify that for purposes of implementing State ADU Law, a primary dwelling may be either a detached house or a unit in a multifamily dwelling structure.

³⁴ Gov. Code, § 66313, subds. (a) & (d).

³⁵ HCD 2022 ADU Handbook, pages 12-13.

³⁶ Gov. Code, § 66314, subd. (d)(2).

The City has two options in response to this letter.³⁷ The City can either amend the Ordinance to comply with State ADU Law³⁸ 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.³⁹ 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.⁴⁰

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 David Barboza at david.barboza@hcd.ca.gov if you have any questions.

Sincerely,



Jamie Candelaria
Senior Housing Accountability Manager
Housing Policy Development Division

³⁷ Gov. Code, § 66326, subd. (b)(2).

³⁸ Gov. Code, § 66326, subd. (b)(2)(A).

³⁹ Gov. Code, § 66326, subd. (b)(2)(B).

⁴⁰ Gov. Code, § 66326, subd. (c).

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)