

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

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November 6, 2024

Steve Mc Harris, Interim Community Development Director
Community Development Department
City of Half Moon Bay
501 Main St.
Half Moon Bay, CA 94019

Dear Steve Mc Harris:

**RE: Review of Half Moon Bay'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 Half Moon Bay (City) ADU Ordinance No. 2021-01 (Ordinance), adopted 08/17/2021, 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 fails to comply with State ADU and junior accessory dwelling unit (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 December 6, 2024.

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 code sections.
2. Section 18.33.020 (A)(2)(a) – *Review and Approval* – The Ordinance states “No coastal development permit is required for an accessory dwelling unit that is wholly within an existing single-family dwelling...” Government Code section

66333, subdivision (d) states “[t]he ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following: ...Require a permitted junior accessory dwelling unit to be constructed within the walls of the proposed or existing single-family residence. 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.” JADUs are also contained entirely within the single-family residence and should be included in this exemption. Therefore, the City should amend this section to include JADUs.

3. Section 18.33.020 (A)(4) – *Approve or Deny* – The Ordinance states, “Unless otherwise required by the Coastal Act, the community development director shall act on all required permits within sixty days of receipt of a complete application.” However, Government Code section 66317, subdivision (a) states “[t]he 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...” The term “act upon” is old language and was amended to read “approve or deny.” Acting on an application does not reflect State ADU Law. The City is required to issue an approval, or a denial with a full set of comments on how to remedy the application within 60 days of receiving a completed application. Therefore, the City must amend this section to reflect State ADU Law.
4. Section 18.33.030 (A)(1), (B)(1), (B)(2), (C)(1), (D)(1), 18.33.040(A) – *ADU Zoning* – The Ordinance lists the zones in which ADUs may be constructed in various circumstances, and includes zones R-1, R-2, R-3, C-D, C-R, C-VS, C-G, and PUD, but does not include agricultural land use zones A-1 or A-2, open space reserve zone OS-R, urban reserve land use zone U-R, or the Dykstra Ranch planned unit development zone PUD-X, all of which allow for single-family or multifamily residential uses. Government Code section 66314 states, “[a] local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use.” Restricting ADUs in areas where single-family or multifamily development is permitted is a direct violation of State ADU Law. Therefore, the City must amend these sections to allow for ADUs in any areas zoned to allow for single-family or multifamily residential use, as applicable.

Additionally, the Ordinance states, “In the substantially undeveloped PUD zoning districts, the lot must be already developed with an existing single-family dwelling.” However, Government Code section 66314, subdivision (d)(2) states, “[t]he ordinance shall do all of the following... Require the accessory dwelling units to comply with all of the following... The lot is zoned to allow single-family or

multifamily dwelling residential use and includes a proposed or existing dwelling.” There is no requirement for a primary dwelling to be existing prior to the submittal of an ADU or JADU application. Therefore, the City must amend these sections to allow for ADU and JADU applications to proceed on lots with both existing and proposed primary dwellings.

5. Section 18.33.030 (A)(3), (B)(3) – *Number of ADUs* – The Ordinance states, “The lot on which the accessory dwelling unit or junior accessory dwelling unit is located does not contain another accessory dwelling unit, junior accessory dwelling unit, or guest house...” However, pursuant to Government Code section 66323, subdivision (a), “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...(i) 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 “One 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 indicate 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. This subdivision applies equally to ADUs created pursuant to Government Code section 66314, subdivision (a), subparagraphs (3) and (4), on lots with proposed or existing multifamily dwellings. Limiting single-family lots to one ADU would prevent property owners from creating ADUs granted under Government Code section 66314. Therefore, the City must revise the Ordinance to remove this restriction.

6. Section 18.33.030 (A)(4) – *ADUs in Garages* – The Ordinance states, “In Ocean Colony, accessory dwelling units and junior accessory dwelling units are not permitted in garages.” However, Government Code section 66323 (a)(1)(A) states, “...a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create... One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply... 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 and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure.” Restricting ADUs from being created within garages of existing single-family dwellings violates State ADU Law. Therefore, the City must remove this restriction.

7. Section 18.33.030 (A)(6) – *Side and Rear Setbacks* – The Ordinance states, “The single-family dwelling or accessory structure has side and rear setbacks sufficient for fire and safety. If the dwelling or structure complies with the city’s setback requirements as described in this code, it shall automatically meet this standard.” Government Code section 66314, subdivision (d)(7) states, “[n]o 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...” Requiring setbacks for ADUs created from converted space violates State ADU Law. Therefore, the City must amend this section to remove the setback requirement.
8. Section 18.33.030 (A)(8), (B)(7), (D)(5) – *Development Standards* – The Ordinance states, “If the accessory dwelling unit or junior accessory dwelling unit is to be included in a proposed single-family dwelling, then the single-family dwelling (including the accessory dwelling unit and junior accessory dwelling unit) shall meet all applicable development standards, including lot coverage and floor area ratio requirements.” However, Government Code section 66323, subdivision (a) begins with “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...” Therefore, the City must remove this development standard requirement entirely.

Additionally, the Ordinance states multiple times in this section, “The accessory dwelling unit complies with the front yard, street facing side, and double frontage setbacks applicable to the primary dwelling...” ADUs created under Government Code section 66323 are not subject to design review criteria or setbacks aside from the four-foot side and rear setbacks established for new detached ADUs. The City must remove the unlawful setback requirements.

9. Section 18.33.030 (B)(6), (D)(4), 18.33.040 (F) – *Building Heights* – The Ordinance states, “The accessory dwelling unit is located at least four feet from the side and rear lot lines... and has a height of no more than sixteen feet.” However, Government Code 66321, subdivision (b)(4) states: “a local agency

shall not establish by ordinance any of the following... Any height limitation that does not allow at least the following, as applicable:

- A. A height of 16 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit.
- B. A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. A local agency shall also allow an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit.
- C. A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.
- D. A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling. This clause shall not require a local agency to allow an accessory dwelling unit to exceed two stories."

Restricting ADUs created under Government Code section 66323, to 16 feet violates State ADU Law. Therefore, the City must amend this section to allow for all instances set forth in Government Code 66321, subdivision (b)(4).

10. Section 18.33.030 (D)(2) – *Detached Multifamily ADUs* – The Ordinance states, "The lot on which the accessory dwelling unit is already developed with an existing two-family or multifamily dwelling." However, Government Code section 66323, subdivision (a)(4) states "...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... Not more than two accessory dwelling units that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling..." An ADU created under Government Code section 66323, subdivision (a)(4) may be proposed on any lot with an existing or proposed multifamily dwelling on the lot. Limiting ADUs only to those lots with existing multifamily dwellings violates State ADU Law. Therefore, the City must amend this section to read "existing or proposed."

11. Section 18.33.040 (D)(5)(a) – *Subjective Language* – The Ordinance states, "...the accessory dwelling unit shall use similar exterior siding materials, colors, window types, door and window trims, roofing materials, and roof pitch as the primary dwelling." However, Government Code section 66314, subdivision (b)(1) states, "[t]he ordinance shall do all of the following... Impose objective standards

on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources.” The use of the word “similar” is subjective and violates section 66314. Imposing subjective criteria on ADUs is not permitted under State ADU Law. Therefore, the City must amend this section to remove all subjective terms and include only objective standards.

12. Section 18.33.00 (F) – *Exceptions to Development Standards* – The Ordinance states, “Development standards, including limits on lot coverage, floor area ratio, open space, and lot size, shall not be used to reduce the gross floor area of the accessory dwelling unit below eight hundred square feet or the height of the accessory dwelling unit below sixteen feet.” Government Code 65852.2, subdivision (b)(3) states “...a local agency shall not establish by ordinance any of the following... 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.” Front setbacks may not be applied in situations where it would prevent an ADU of 800 square feet or less to be created on the lot. Therefore, the City must amend this section to include an exception for front setbacks on ADUs 800 square feet or less.

13. Section 18.33.050 (H), (H)(2), (H)(4) – *Parking* – The Ordinance states, “A minimum of one off-street parking space for the accessory dwelling unit, in addition to the spaces required for the primary dwelling, shall be provided for units...” However, Government Code section 66314, subdivisions (d)(10) states “(A) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. (B) Off-street 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. (C) This subparagraph shall not apply to an accessory dwelling unit that is described in Section 66322.” Requiring additional offstreet parking for ADUs outside of the requirements of this subdivision violates State ADU Law.

The Ordinance states “Notwithstanding subsection (H)(1) of this section, a parking space shall not be required within the areas depicted in Figure 18.33-1...

- a. For an accessory dwelling unit or junior accessory dwelling unit that is on the same lot as a historic property listed on or eligible for listing on either the National Register of Historic Places or the California Register of Historical Resources;
- b. When a parking exception has been granted in accordance with Section 18.36.080.” Government Code section 66322, subdivision (a) states “A 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 onstreet 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.”

The Ordinance must be amended to reflect all instances where no parking standards will be imposed. Requiring any additional parking in these circumstances violates State ADU Law.

Additionally, the Ordinance states, “When a private garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an accessory dwelling unit within the areas depicted in Figure 18.33-1, or a junior accessory dwelling unit anywhere in the city, the spaces contained in such structures shall be replaced to the extent they are required to meet the numerical parking requirements in Chapter 18.36.” However, Government Code 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.” Requiring additional offstreet parking for ADUs outside of the requirements of these subdivisions violates State ADU Law. Pursuant to this subdivision, any covered parking structure demolished in conjunction with the construction of an ADU is not

required to replace that parking. Therefore, the City must remove this noncompliant section and amend all sections to allow for all parking exemptions.

14. Section 18.33.060 (B) – *Streamlined Processing* – The Ordinance states, “The applicant may elect to have the city process the accessory dwelling unit or junior accessory dwelling unit separately from the other proposal(s). If the applicant makes this election, the streamlining procedures described in Section 18.33.020 would apply to the accessory dwelling unit or junior accessory dwelling unit proposal after the applicant obtains city approval for the other proposal(s).” However, Government Code section 66317, subdivision (a) states, “[t]he 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. 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. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay.” Pursuant to this subdivision, an ADU or JADU may be submitted concurrently with a primary dwelling unit and the review timeline shall be 60 days from the time a completed application is received. Therefore, the City must amend this section to allow for concurrent review.

15. Section 18.33.080 (B) – *Separate Conveyance* – The Ordinance states, “Neither the single-family dwelling nor the accessory dwelling unit shall be sold or otherwise conveyed separately from the other unit, either directly or indirectly.” However, Government Code section 66341 provides for a narrow exemption to this rule which lists five criteria, all of which must be met in order to be eligible. Prohibiting the separate conveyance of ADUs which meet these criteria violates State ADU Law. Therefore, the City must amend this section to allow for this exception.

In addition to the above findings and related to the City’s ADU ordinance, Measure A and Measure D, the City’s voter initiatives to enact growth control, conflicts with state law and is prohibited from implementation. Accessory Dwelling Units shall not be considered in the application of any local ordinance, policy or program to limit residential growth. (Government Code section 66319). Moreover, the Housing Crisis Act

(Government Code section 66300), among other provisions, prohibits an affected local government from limiting the number of land use approvals or permits. HCD will follow up with more detailed guidance, related to the City's housing element, under separate cover.

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 Tyler Galli at Tyler.Galli@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)