

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

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September 16, 2024

Chuck Kinney, Community Development Director
Community Development Agency
County of Kings
1400 W. Lacey Boulevard, Building #6
Hanford, CA 93230

Dear Chuck Kinney:

**RE: Review of County of Kings' 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 County of Kings (County) ADU Ordinance No. 668-2-23 (Ordinance), adopted August 29, 2023, to the California Department of Housing and Community Development (HCD). The Ordinance was received on September 28, 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. Pursuant to Government Code section 66326, subdivision (b)(1), the County has up to 30 days to respond to these findings. Accordingly, the County must provide a written response to these findings no later than October 16, 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. *Government Code References* – The Ordinance contains references to Government Code sections 65852.2 and 65852.22 which must be updated to refer to the current code sections created by SB 477. The Enclosure below is a table showing the correspondence between the old and new code sections.
2. *Section 507.C.5 (Deletion) – ADU Separate Sale and ADU Rentals* – The Ordinance deletes the following sentence from the County Code, “An accessory unit cannot be separately owned or sold, but may be rented.” However, Government Code section 66314, subdivision (d)(1) states, “Except as provided

in Article 4 (commencing with Section 66340), the accessory dwelling unit may be rented separate from the primary residence, but shall not be sold or otherwise conveyed separate from the primary residence.” The deletion cited above could convey the false impression that an ADU may not be sold separately under any circumstances and may not be rented. Therefore, the County should amend the Ordinance to clarify that an ADU meeting the criteria in Government Code sections 66340-66342 may be sold separately and that any ADU may be rented.

3. Section 507.C.4 – *Number of ADUs Allowed* – The Ordinance states, “In a single-family residential zoned district, one attached or detached or conversion accessory dwelling unit is permitted per parcel or lot that already contains or proposes a single-family residence. In a multi-family residential district, one attached or two detached accessory dwelling units are permitted. With regard to a conversion accessory dwelling unit, at least one interior ADU and up to 25 percent of the number of existing multi-family dwelling units are permitted. For multi-family dwelling units all interior ADUs must be converted from existing non-livable space.”

However, Government Code section 66323, subdivision (a)(1), states, “Notwithstanding subdivisions (a) to (d), 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 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 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. Limiting single-family lots to one ADU or one JADU would prevent property owners from creating ADUs by-right under subdivision (a). The Ordinance is ambiguous regarding whether it would allow multifamily lots to host two detached ADUs and conversion ADUs, which both must be allowed by-right under subdivision (a), regardless of

whether there is already an attached ADU on the property. Therefore, the County must amend the Ordinance to allow the combinations of single-family and multifamily ADUs described in Government Code section 66323, subdivision (a).

4. Sections 507.C.5 & 704 – *ADU Setbacks* – Section 507.C.5. of the Ordinance states, “An attached or detached accessory dwelling unit is subject to a maximum height limit of 30 feet and minimum rear and side setbacks of 4 feet.” Section 704 of the Ordinance states, “Attached or detached accessory dwelling units and junior accessory dwelling units must have minimum 4 foot rear and side setbacks” in the notes below Table 7-2. 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.” The Ordinance requires four-foot side and rear setbacks for all attached or detached ADUs, but State ADU Law does not require setbacks for conversion ADUs. Therefore, the County must amend the Ordinance to clarify that conversion ADUs and JADUs are not required to comply with four-foot side and rear setbacks.
5. Section 507.D – *JADU Deed Restriction* – The Ordinance lists development standards for JADUs. However, Government Code section 66333, subdivision (c) states a JADU ordinance shall, “Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following: (1) 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. (2) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.” The Ordinance does not require the JADU deed restriction. Therefore, the County must amend the Ordinance to require the JADU deed restriction described above.
6. Section 507.D – *JADU Entrances* – The Ordinance lists development standards for JADUs. However, Government Code section 66333, subdivision (e) states a JADU ordinance shall, “(A) Require a permitted junior accessory dwelling unit to include a separate entrance from the main entrance to the proposed or existing single-family residence. (B) 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 Ordinance does not include these requirements. Therefore, the County must amend the Ordinance to include the requirements for JADU entrances.

7. Section 507.D – *JADU Efficiency Kitchen* – The Ordinance lists development standards for JADUs. However, Government Code section 66333, subdivision (f) states a JADU ordinance shall, “Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following: (A) A cooking facility with appliances. (B) 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 does not include this requirement. Therefore, the County must amend the Ordinance to require that a JADU include an efficiency kitchen.
8. Section 507.D.1 – *JADU in Attached Garage* – The Ordinance states, “Floor Area: A junior accessory dwelling unit permitted by this section shall not exceed 500 square feet of floor area and must be created within the walls of a proposed or existing single-family residence.” However, Government Code section 66333, subdivision (d) states a JADU ordinance shall: “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.” The Ordinance is correct here but lacks the clarification that an attached garage may be converted to an ADU. Therefore, the County must amend the Ordinance to clarify that an attached garage is eligible for conversion to a JADU.
9. Section 507.D.3 – *JADU Height and Setbacks* – The Ordinance states, “An attached or detached accessory dwelling unit is subject to a maximum height limit of 30 feet and minimum rear and side setbacks of 4 feet.” However, Government Code sections 66333-66339 do not restrict the height or setbacks of JADUs, which are always conversions of proposed or existing space of the primary single-family dwelling. This part of the Ordinance does not refer to JADUs, but it is in a list of JADU development standards. It is also identical to Section 507.C.5, which is discussed above. Therefore, the County must amend the Ordinance to delete Section 507.D.3.
10. Section 507.D.4. – *JADU Replacement Parking* – The Ordinance states, “A junior accessory dwelling unit created in an attached garage may be required to provide replacement parking.” However, Government Code section 66334, subdivision (a) states, “A junior accessory dwelling unit ordinance adopted pursuant to Section 66333 shall not require additional parking as a condition to grant a permit.” The Ordinance requires JADU replacement parking even though no additional parking requirement is allowed in connection with a JADU application. Therefore, the County must amend the Ordinance to delete this provision.

11. Section 507.D.5 – *JADU Owner Occupancy* – The Ordinance states, “The property owner must reside in either the primary residence, or in the junior accessory dwelling unit pursuant to Government Code, Section 65852.22, subd. (a)(2).” However, the new corresponding 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.” The Ordinance does not note these exceptions. Therefore, the County must amend the Ordinance to note that JADU owner occupancy is not required if the owner is a governmental agency, land trust, or housing organization.
12. Section 507.E – *Development Standards Adopted by Reference* – The Ordinance states, “Except as specifically set forth in this Article and the standards set forth in this section, all accessory dwelling units regulated pursuant to this Article shall meet all of the requirements of the R District in which the accessory dwelling unit is located including, without limitation, requirements regarding fences, walls and hedges; site area, frontage width, and depth of sites; coverage; yard requirements; distances between structures; signs; and general provisions and exceptions.” However, Government Code section 66321, subdivision (b)(3) states 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.”

Furthermore, Government Code section 66317, subdivision (c) states: “No local ordinance, policy, or regulation, other than an accessory dwelling unit ordinance consistent with this article shall be the basis for the delay or denial of a building permit or a use permit under this section.” ” The Ordinance does not note the exception from development standards in subdivision(b)(3). The Ordinance also does not cite the sections or articles of the Kings County Development Code that it is attempting to apply to ADUs, making it unclear which standards apply. Therefore, the County must amend the Ordinance to note the exception from development standards in subdivision Government Code section 66321, subdivision (b)(3) and specifically cite the sections or articles of the Kings County Development Code that it is attempting to apply to ADUs.

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 County's efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the County in fully complying with State ADU Law. Please feel free to contact David Barboza, of our staff, at (916) 907-3002 or at david.barboza@hcd.ca.gov.

Sincerely,



Jamie Candelaria
Senior Housing Accountability Manager
Housing Policy Development Division

¹ Gov. Code, § 66326, subd. (b)(2).

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

³ Gov. Code, § 66326, subd. (b)(2)(B).

⁴ 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)