

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

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December 10, 2025

Michael Fellows, Community Development Manager
Community Development Department
City of Lemon Grove
3232 Main Street
Lemon Grove, CA 91945

Dear Michael Fellows:

RE: Review of Lemon Grove's Accessory Dwelling Unit (ADU) Governance under State ADU Law (Gov. Code, §§ 66310 - 66342)

Thank you for submitting the City of Lemon Grove (City) Municipal Code citation to section 17.24.060, updated in 2022, to the California Department of Housing and Community Development (HCD). HCD has reviewed the Municipal Code and submits these written findings pursuant to Government Code section 66326, subdivision (a). HCD finds that the Ordinance fails to comply with State ADU 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 January 9, 2026.

The Municipal Code addresses many statutory requirements; however, HCD finds that the Municipal Code does not comply with State ADU Law as follows:

1. *Pending Changes* - Please note that there are pending changes to State ADU Law due to go into effect on January 1st, 2026; HCD advises the jurisdiction to review these laws (AB 1154, SB 9, SB 543) before considering drafting an updated ordinance.
2. Section 17.24.060 – *Approval/Denial* – The Municipal Code section provided to HCD does not contain references to required approval and denial procedures outlined in Government Code section 66317, subdivisions (a), (b) and (c), which require, among other things, ministerial approval within 60 days or a full set of comments to be provided with a denial. The City must amend the Municipal Code to provide for all requirements described in section 66317.
3. Section 17.24.060 – *Statutory Numbering* - The Municipal Code contains several references to code sections that were deleted by SB 477. 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 Municipal Code to refer to the correct Government Code sections.

4. Section 17.24.060 B.1.b.i – *Unit Allowances* – The Municipal Code limits ADU allowances on single family lots to “One accessory dwelling unit and one junior accessory dwelling unit.” 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 “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 a list of permitted ADU types means that any of these ADU types can be combined on a lot, zoned for single-family dwellings.

Section 66323 thus permits a homeowner to create one converted ADU; one detached, new construction ADU; and one JADU. If the local agency approves an ADU and/or JADU 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 of Government Code section 66323(a)(1) and (2) the local agency must approve the application, entitling the applicant to a total of three units on their lot in addition to the primary dwelling. This section also requires the ministerial approval of detached ADUs in combination with units created in portions of multifamily primary dwellings that are not yet used as habitable space.

In addition, Government Code section 66323, subdivision (a)(4)(A)(ii), states, “On a lot with an existing multifamily dwelling, not more than eight detached accessory dwelling units... not [to] exceed the number of existing units on the lot” and subdivision (a)(4)(A)(iii) states, “On a lot with a proposed multifamily dwelling, not more than two detached accessory dwelling units.” Restricting detached ADUs with multifamily dwellings to two units, and only with existing multifamily dwellings is inconsistent with State ADU Law.

Limiting the number of units to one prescriptive section of State ADU Law (c.f. § 66323) would impermissibly constrain an application for the other (c.f. § 66314). For example, if a new construction detached unit with a size of 1,000 square feet is approved per section 66314, the limitation by format would preclude the state-mandated ministerial approval of a new construction 800 square foot detached unit subject to section 66323, subdivision (a)(2). Therefore, the City must amend the Ordinance to allow for at least one unit subject to section 66314

to be combined, in any order, with any unit subject to Government Code section 66323.

5. Section 17.24.060 B.1.b.ii – *Unit Allowances, Multiple Single Family* – The Municipal Code allows, on a lot with more than one single-family primary dwelling, only “one internal or detached accessory dwelling unit per lot”. The unit allowance required on a lot with a single-family primary dwelling per section 66323 has been discussed in the previous finding. Section 66323, subdivisions (a)(1) and (a)(2) refer to a lot with “...a proposed or existing single-family dwelling”, not “*only one* proposed or existing single-family dwelling” (emphasis added). As a result, the unit allowances applicable to single-family dwellings apply to lots with multiple single-family dwellings as well. Government Code section 66323, subdivision (c) reinforces this, stating “A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.” Therefore, the City must amend the Municipal Code to remove the restriction to one ADU for lots with multiple, detached single-family dwellings.
6. Section 17.24.060 B.1.b.iii – *Unit Allowances, Multifamily Primary* – The Municipal Code allows “...up to two detached accessory dwelling per lot”. This reflects outdated code. Current Government Code section 66323, subdivision (a)(4)(A)(ii) requires ministerial approval of, “On a lot with an existing multifamily dwelling, not more than eight detached accessory dwelling units. However, the number of accessory dwelling units allowable pursuant to this clause shall not exceed the number of existing units on the lot.” Only in the case of a *proposed* multifamily primary dwelling does State ADU Law allow, in section 66323, subdivision (a)(4)(A)(iii), “...not more than two detached accessory dwelling units.” The City must amend the Municipal Code to align with current law and provide for the allowance of up to eight detached units with existing multifamily primary dwellings.
7. Section 17.24.060 D.1.c – *JADU Deed Restriction* – The Municipal Code states, “A deed restriction shall be recorded against the title of the property that stipulates this owner occupancy requirement...” However, Government Code section 66333, subdivision (d) requires JADU deed restrictions to include only “[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” and “A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this article.” The inclusion of owner occupancy on and the omission on the restriction on size and attributes from a deed restriction is therefore inconsistent with State JADU Law. Although the City can provide an owner occupancy requirement for JADUs, this stipulation cannot be added to the deed restriction. The City must amend the Municipal Code to remove the owner occupancy stipulation and add a restriction for size and attributes.

8. Section 17.24.060 D.1.d – *Exemption Height* – The Municipal Code states, “Development standards included in this chapter or elsewhere in Title 17 shall not prohibit an accessory dwelling unit that is up to sixteen feet high.” However, Government Code section 66321, subdivision (b)(3), which prohibits development standards from precluding a unit up to 800 square feet, does not reference height and thus height allowances described in section 66321, subdivision (b)(4), which may in some cases be higher than 16 feet, must apply to the exemption units. The City must remove the phrase “that is up to sixteen feet high” from this section.
9. Section 17.24.060 D.1.e – *Development Standards* – The Municipal Code states, “The following development standards shall apply to accessory dwelling units and junior accessory dwelling units. Where development standards are not specified in this chapter, accessory dwelling units and junior accessory dwelling units shall meet all development standards for the zone within which they are located, provided the development standards do not prohibit the minimum allowance as described in subsection (d) above.”

However, units created pursuant to Government Code section 66323 cannot be precluded by local development standards and the Municipal Code makes no mention of a carveout specific to such units. The City must amend the Municipal Code to exempt section 66323 units from these underlying zoning standards.

10. Section 17.24.060 D.1.e.vi – *Height* – The Municipal Code states, “The maximum height for detached accessory dwelling units shall be sixteen feet.” However, Government Code section 66321, subdivision (b)(4) requires minimum allowances of 16, 18 or 20 feet given provided circumstances. The City must amend the Municipal Code to provide for these higher height allowances.
11. Section 17.24.060 D.1.e.vii – *Front Setbacks* – The Municipal Code states, “The front setback shall be consistent with the requirements of the underlying zone.” However, Government Code section 66321, subdivision (b)(3) prohibits “Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” The City must amend the Municipal Code to provide for this exemption.

12. Section 17.24.060 D.1.e.viii – *Underlying Setbacks* – The Municipal Code states, “Setbacks for Internal and Junior Accessory Dwelling Units. Setbacks for internal accessory dwelling units and junior accessory dwelling units shall be consistent with the requirements for the primary dwelling in the underlying zone.” 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.” Therefore, the City must amend the Municipal Code to state that any underlying setback larger than 4 feet, except those required for fire and safety, do not apply.
13. Section 17.24.060 D.1.f – *Parking* – The Municipal Code states, “...an attached garage that is removed as part of a conversion to a junior accessory dwelling unit shall be replace elsewhere on the property.” 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.” Therefore, the City may not require an additional parking space in the event of a garage converted to a JADU. The City must remove this requirement from the Municipal Code.
14. Section 17.24.060 D.1.g – *Parking Exceptions* – The Municipal Code lists several conditions under which parking may not be required but omits references to the conditions described in Government Code section 66322, subdivision (a)(6), which states, “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.” The City must add this additional parking exception to the Municipal Code.
15. Section 17.24.060 D.1.h – *Sprinklers* – The Municipal Code states, “Fire sprinklers shall not be required for accessory dwelling units or junior accessory dwelling units unless they are required for the primary dwelling.” Current Government Code section 66314, subdivision (d)(12) expands on this to state “The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.” The City must add this language to this section of the Municipal Code.
16. Section 17.24.060 D.1.i – *Subjective Terms* – The Municipal Code states that ADUs and JADUs must use a “complimentary” architectural style and that “the quality of the materials shall be the same or exceed that of the primary dwelling.” However, Government Code section 66314, subdivision (b)(1) allows

local jurisdictions to apply only objective standards to ADUs and JADUs. There is no objective standard for “complementary” architectural style, nor is there any objective standard for what constitutes a higher or equal quality of materials. Therefore, the City must remove these subjective terms from the Municipal Code.

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 Mike Van Gorder at Mike.VanGorder@hcd.ca.gov if you have any questions.

Sincerely,



Jamie Candelaria
Section Chief, ADU Policy
Housing Accountability Unit

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).