

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

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April 24, 2025

Christian Svensk  
Community Development Director  
City of Lincoln  
600 6<sup>th</sup> Street, Lincoln CA, 95648

Dear Christian Svensk:

**RE: Review of City of Lincoln's Accessory Dwelling Unit (ADU) Ordinance under  
State ADU Law (Gov. Code, §§ 66310 - 66342)**

Thank you for submitting the City of Lincoln's (City) ADU Ordinance No. 1080B (Ordinance), adopted July 23, 2024, to the California Department of Housing and Community Development (HCD). The Ordinance was received on August 6, 2024. 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 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 May 24, 2025.

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

1. *Senate Bill (SB) 1211 (Chapter 296, § 3, Statutes of 2024)* – As of January 1, 2025, the Legislature changed Government Code section 66323. Subdivision (a)(4)(A)(ii) and (iii), now allows for the following:
  - (ii) 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.
  - (iii) On a lot with a proposed multifamily dwelling, not more than two detached accessory dwelling units.
2. *Assembly Bill (AB) 2533 (Chapter 834, Statutes of 2024)* - As of January 1, 2025, there are changes to Government Code section 66332. Subdivisions (a) and (b) were changed and subdivisions (d) – (f) were added. Changes include permitting previously unpermitted ADUs, adding the same protections for JADUs, and

setting additional requirements for local agencies. The City should review these new requirements and adjust the Ordinance to comply with State ADU Law.

3. *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 Government Code sections.
4. *Section 3 – Severability* – The Ordinance states: “If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. City Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases or portions to be declared invalid or unconstitutional.” However, Government Code section 66316 states “If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this article, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this article for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this article.” The *Severability* clause implies that some parts of the Ordinance will be valid even if other parts are not valid. The City must remove the Severability clause and apply the standards under Government Code sections 66310-66342 when the existing accessory dwelling unit ordinance fails to meet the requirements of this article.
5. *Section 18.37.020.1 – Review Process* – The Ordinance states, “Applications for ADUs and JADUs pursuant to this section shall be processed ministerially as part of a building permit, without discretionary review or a hearing within 60 days from the date the City receives a complete application if there is an existing single-family or multifamily dwelling on the lot.” However, State ADU Law requires that “The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot.”<sup>1</sup> The Ordinance uses the word “processed”, but the statute states the City must “approve or deny” the application. The City must amend the Ordinance to replace “processed” with “approved or denied”.

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<sup>1</sup> Gov. Code, § 66317, subd. (a).

6. Section 18.37.030.1 (c) – *JADUs in Garage* – The Ordinance states: “A JADU shall be located entirely within a proposed or existing single-family dwelling structure.” However, Government Code section 66333, subdivision (d) allows “...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 City should amend the Ordinance to clarify that junior accessory dwelling units (JADUs) may be created within enclosed uses within the residence such as an attached garage.
7. Section 18.37.030.-1 – *Unit Combination* – The Ordinance lists the maximum number of ADUs and JADUs Per Lot as: “(i). On a lot that contains an existing or proposed single-family dwelling: One (1) ADU and One (1) JADU, (ii). On a lot that contains an existing multifamily dwelling: Two (2) ADUs, detached from the multifamily structure, and maximum of 25 percent of the number of units in the multifamily dwelling. (iii). For a lot with existing single-family and multi-family residence, the owner may elect to develop the lot under the allowances provided for either single-family residences or multi-family residences, but not both.”

However, pursuant to Government Code section 66323, subdivision (a), “Notwithstanding Sections 66314 to 66322, inclusive, a local agency shall ministerially approve an application...to create any of the following: (A) 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.” Additionally, subparagraph (B) 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 a list of ADU types permitted under Government Code section 66323, indicates that any of these ADU types can be combined on lots with existing or proposed single-family dwellings.

This permits a homeowner, who meets the specified requirements, to create one converted ADU; one detached, new construction ADU; and one JADU. ADU types can be combined on lots with existing or proposed single-family dwellings. Therefore, the City must amend the Ordinance to provide for all ADU combinations described in Government Code section 66323.

8. Section 18.37.050.1 – *Maximum Floor Area* – The Ordinance states, “All ADUs may be up to 1,000 square feet in size. An ADU may be up to 1,200 square feet in size if the ADU is less than 50% of the size of the primary dwelling.” However, Government Code, section 66323, subdivision (a)(4), requires the local agency to approve ADUs that are detached from a multifamily dwelling structure. Detached ADUs on multifamily lots do not have a floor area restriction under

Government Code, section 66323, subdivision (a)(4). Therefore, the City must amend the Ordinance to exclude units created under Government Code section 66323 from this requirement.

9. Section 18.37.050.1 – *Front Setback* – The Ordinance states, The Front setback as the same as required for primary residence. However, Government Code sections 66321, subdivision (b)(3) and Government Code section 66323, subdivision (a), require local agencies to approve ADUs regardless of front setback requirements, when certain conditions are met. The Ordinance does not make the required exceptions from front setback requirements. Therefore, the City must amend the Ordinance to exempt ADUs meeting the criteria of sections 66321 and 66323 from front setback requirements.
10. Section 18.37.050.4 – *Fire Sprinklers* – The Ordinance states, “ADUs shall not be required to provide fire sprinklers if they are not required for the primary dwelling unit.” However, Government Code, section 66314, subdivision (d)(12), states, “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.” The city must amend the Ordinance to reflect both provisions of state law.
11. Section 18.37.070.(1), (3), (4), (5) – *Architectural Style* – The Ordinance lists several architectural and design standards for ADUs. Standards such as requiring “similar exterior materials”, “same trim location” and “matching windows” are subjective in nature and are inconsistent with Government Code section 66314, subdivision (a)(2), which allows local jurisdictions to apply “objective standards on accessory dwelling units.” Objective standards involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.<sup>2</sup> Additionally, design standards not found in Section 66323 of the Government Code cannot be imposed on ADUs created under this section.<sup>3</sup> Therefore, the City must remove subjective language and only include objective standards for ADUs.

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<sup>2</sup> Gov. Code § 66313, subd. (i).

<sup>3</sup> Gov. Code § 66323, subd. (b).

The City has two options in response to this letter.<sup>4</sup> The City can either amend the Ordinance to comply with State ADU Law<sup>5</sup>, 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.<sup>6</sup> 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.<sup>7</sup>

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 Reshma Sen at [Reshma.Sen@hcd.ca.gov](mailto:Reshma.Sen@hcd.ca.gov) if you have any questions.

Sincerely,



Jamie Candelaria  
Senior Housing Accountability Manager  
Housing Policy Development Division

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<sup>4</sup> Gov. Code, § 66326, subd. (c)(1).

<sup>5</sup> Gov. Code, § 66326, subd. (b)(2)(A).

<sup>6</sup> Gov. Code, § 66326, subd. (b)(2)(B).

<sup>7</sup> Gov. Code, § 66326, subd. (c)(1).

## State ADU/JADU Law Statutory Conversion Table

New Government Code Sections	Previous Government Code Sections
<b>Article 1. General Provisions</b>	
66310	65852.150 (a)
66311	65852.150 (b)
66312	65852.150 (c)
66313	General Definition Section 65852.2 (j) 65852.22 (j)
<b>Article 2. Accessory Dwelling Unit Approvals</b>	
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.
<b>Article 3. Junior Accessory Dwelling Units</b>	
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)
<b>Article 4. Accessory Dwelling Unit Sales</b>	
66340	65852.26 (b)
66341	65852.26 (a)
66342	65852.2 (a)(10)