

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

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November 19, 2024

Vince Bertoni, Director of Planning
Los Angeles Department of City Planning
City of Los Angeles
200 N. Spring St., Room 525-C
Los Angeles, CA 90012

Dear Vince Bertoni:

RE: Review of Los Angeles's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, §§ 66310 – 66342)

Please Note: As of January 1, 2025, with the chaptering of Senate Bill (SB) 1211 (Chapter 296, Statutes of 2024), under Government Code section 66323, subdivision (a)(4)(A)(ii), there is an allowance for "...up to 8 detached ADUs to be created on a lot with an existing multifamily dwelling, provided that the number of ADUs does not exceed the number of existing units on the lot, and up to 2 detached ADUs on a lot with a proposed multifamily dwelling."

Thank you for submitting the City of Los Angeles (City) ADU Ordinance No. 186481 (Ordinance), passed December 11, 2019; and effective December 19, 2019, 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. HCD finds that the Ordinance does not comply with section State ADU and JADU Law in the manner noted below. Under that statute, 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 19, 2024.

The Ordinance references the authority of the Zoning Administrator to 'clarify, amend or revoke' provisions of the City's ADU ordinance, and thus HCD reviewed the City's ordinance in conjunction with Zoning Administrator Memo 142. While HCD attempted to also reference Zoning Administrator 134, as we could not obtain the document via our efforts and our request for the memo from the City went unanswered, we were unable to also review this previous memo.

The Ordinance and Memorandum address many statutory requirements; however, HCD finds that the Ordinance and Memorandum do not comply with State ADU Law in the following respects:

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 12.03, subdivisions (33)(c)(1)(iii); (33)(d)(3) – *Development Standards* – The Ordinance states, “No other minimum or maximum size for an ADU, including size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, shall apply for either attached or detached dwellings that does not permit at least an 800 square foot ADU that is at least 16 feet in height with 4-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.”

This appears to reference provisions set forth in Government Code section 66321, subdivision (b)(3). However, the Ordinance omits updated statutory language specifying that local agencies may not impose any “...requirement for a zoning clearance or separate zoning review...” based on the enumerated standards. While HCD found no such requirements within the Ordinance, including this language would increase clarity regarding permit application expectations.

Additionally, Government Code section 66321, subdivision (b)(3), requires local agencies to add “front setbacks” as a criterion by which an 800 square foot ADU with four feet rear and side setbacks cannot be precluded from existing. Jurisdictions can only prohibit an ADU within a front setback if the ADU is greater than 800 square feet or would not meet side/rear setback.¹ Therefore, the City should amend the Ordinance to ensure a separate zoning review, or front setbacks do not prevent the permitting of an 800 square foot ADU meeting all other applicable standards.²

3. Section 12.22, (33)(c)(2) – *Ministerial Approval* – The Ordinance states, “An application to create an ADU shall be acted upon within 60 days from the date the City receives a completed application if there is an existing single-family or multifamily dwelling on the lot.”

However, Government Code section 66317 states, “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.” (Emphasis added.) HCD notes that ZA Memo 142 recommends the City amend LAMC 12.22 A.33 (c)(2) to replace “acted upon” with

¹ Gov. Code, §§ 66314 subd., (d)(7); 66321 subd. (a)(3).

² HCD notes the first sentence of subdivision 33(c)(1) is a fragment and should be corrected.

“approve or deny”. While the memo demonstrates Los Angeles’s knowledge and practical application of current State ADU Statute, these recommendations do not concretely alter the ministerial review process for ADUs. Therefore, the City should amend the Ordinance to replace “acted upon” with “approve or deny”.

4. Section 12.22, subdivisions (33)(c)(4) and (g)(2); ZA Memo section (A)(2) – *Very High Fire Hazard Severity Zones* – The Ordinance states, “No ADU is permitted on any lot that is located in both a Very High Fire Hazard Severity Zone [VHFHSZ] designated by the City of Los Angeles Fire Department pursuant to Government Code Section 51178 and a Hillside Area as defined by the Hillside Area Map pursuant to Section 12.03 of this Code...(LAMC section 12.22, subd. (33)(c)(4)).” The Ordinance also states, “An ADU created pursuant to Section 65852.2 (e)(1)(B) or (D) of the Government Code shall not be located on any lot that is located in both a Very High Fire Hazard Severity Zone...” However, Government Code 66314, subdivision (a), only allows local jurisdictions to designate areas where ADUs may be permitted based on “the impact of accessory dwelling units on traffic flow and public safety.” The City has not adequately demonstrated that ADUs will impact public safety in the VHFHSZ. Therefore, the City must either remove this prohibition or provide, by resolution, specific evidence of areas within the VHFHSZ that would impact public safety via ADU development.
5. Section 12.22, subdivision (33)(c)(5) – *ADU Allowance* – The Ordinance states, “Except as otherwise permitted by this subdivision, only one ADU is permitted per lot.” 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 an enumeration of ADU types permitted under Government Code section 66323, indicate that any of these ADU types can be combined on lots with existing or proposed single-family dwellings. As noted in HCD’s 2022 Handbook, the statute does not use “or” nor “one of” to indicate only one or another would be applicable to the exclusion of the other.

Thus, if a local agency approves an ADU that is created from existing (or proposed) space of a single-family dwelling, or created from an existing accessory structure, and the owner subsequently applies for a detached ADU permit (or vice versa), which meets the size and setback requirements pursuant to subdivision (e), the local agency cannot deny a permit for a ADU under this section. This

permits a homeowner, who meets specified requirements, to create **one (1) converted ADU, one (1) detached, new construction ADU, and one (1) JADU, in any order without prejudice, totaling three units.**

This standard simultaneously applies to ADUs created pursuant to Government Code section 66323, subdivisions (a)(3) and (4), which permits both ADUs within the portions of existing multifamily dwelling structures on lots with proposed or existing multifamily dwellings and two detached ADUs according to specified requirements. Therefore, the City must amend the Ordinance to clarify correct ADU allowances pursuant to Government Code section 66323, subdivision (a).

6. Section 12.22, subdivision (33)(d)(2) – *Story Requirements* – The Ordinance states, “Structures containing a detached ADU shall not be greater than two stories.” However, Government Code section 66321, subdivision (b)(4)(D) states that: “This clause shall not require a local agency to allow an accessory dwelling unit to exceed two stories,” indicating that local agencies must permit ADUs with two stories and no other deficiencies. Additionally, local agencies may not prevent ADUs from being constructed above detached garages or accessory structures if they meet height requirements stipulated by Government Code section 66321, subdivision (b)(4). Therefore, the City must remove this language from the Ordinance.
7. Section 12.22, subdivision (33)(d)(3)(ii) – *Detached ADU Requirements* – The Ordinance indicates that detached ADUs shall not be located between a proposed or existing dwelling unit and the street adjoining the front yard, except: “Where the ADU is being added to a lawfully existing garage or accessory structure building.” The Ordinance uses the term “lawfully existing” to denote the legal permitted or unpermitted status of a garage or accessory structure. However, the City may not deny a permit to create an ADU or JADU due to the correction of an unpermitted accessory structure that does not present a threat to public health and safety and is not affected by construction of the ADU.³ Additionally, Government Code section 66321, subdivision (a)(3), prohibits local agencies from imposing front setbacks that would preclude an ADU of 800 square feet with four-foot rear and side setbacks and precludes front setbacks from being imposed on ADUs and JADUs created pursuant to Government Code section 66323, subdivision (a) entirely. Therefore, the City must amend the Ordinance to remove these provisions that could restrict the creation of ADUs.
8. Section 12.22, subdivision (33)(e) – *Detached, Conversion ADUs* – The Ordinance states, “Attached ADUs can be either attached to or completely contained within an existing or proposed dwelling, and must comply with all provisions in Paragraph (c) and all of the following provisions in this Paragraph (e)...” However, Government Code section 66323, subdivision (a)(1)(A), also

³ Gov. Code, §§ 66322 subd. (b); 66336.

allows one (1) ADU "...within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure." The Ordinance's ADU requirements do not allow for the conversion of detached, accessory structures. Therefore, the City must amend the Ordinance to allow for the conversion of detached accessory structures pursuant to Government Code section 66323, subdivision (a)(1)(A).

9. Section 12.22, subdivisions (33)(g)(1); (33)(c)(1)(iii); ZA Memo 134 (A)(2) – *Detached ADU Height Requirements* – The Ordinance states that, "An ADU created pursuant to Section 65852.2, subdivision (e)(1)(B) of the Government Code shall have a floor area of not more than 800 square feet and a height of no more than 16 feet..." However, Government Code section 66321, subdivision (4)(b) allows for a height of 18 feet for a detached ADU 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. Local agencies shall also allow an additional two feet in height to accommodate a roof pitch on the detached ADU aligned with that of the primary dwelling unit to allow a height of up to 20 feet. Therefore, the City must amend the Ordinance to make note of the correct height requirements for detached ADUs.
10. Section 12.22, subdivision (33)(h)(2) – *General Provisions* – The Ordinance states, "In cases where additional dwelling units are added to a lot after the creation of the ADU or JADU, an ADU and JADU will be counted towards the overall number of dwelling units as permitted by the zone." However, Government Code section 66319 states, "An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot." (Emphasis added.) For example, if adding another dwelling unit or accessory structure to an ADU would exceed the allowable density for the lot, the ADU must not be included in such a density calculation. ADUs built pursuant to Government Code section 66314 subdivision may not count towards the overall number of dwelling units for purposes of allowable density calculations regardless of the order said dwelling units are constructed. Therefore, the City must amend the Ordinance to note these conditions.
11. Section 12.22, subdivision (33)(h)(3) – *Separate Conveyance* – The Ordinance states, "ADUs and JADUs may be rented but shall not be sold separate from the existing or proposed dwelling unit on the same lot." However, Government Code section 66341 creates a narrow exception to allow separate conveyance of an ADU to a qualified buyer if the property was built or developed by a qualified non-profit corporation, among other conditions. Therefore, the City must amend the Ordinance to note these exceptions.

12. Section 12.22 subdivision (33)(h)(4) – *Non-Conforming Zoning Conditions* - The Ordinance states, “Applicants for ministerial approval of a permit application for the creation of an ADU or JADU shall not be required to correct nonconforming zoning conditions.” While this language conforms to State ADU Statute, the Ordinance omits statutory language that further prevents local agencies from denying ADU permit applications due to building code violations or non-conforming structures that do not present a threat to public health and safety.⁴ Therefore, the City must amend the Ordinance to include these provisions.

13. Section 12.22, subdivision (33)(i) – *Zoning Administrator Authority* – The Ordinance states, “It is the intent of the City to retain all portions of this subdivision regarding ADUs and JADUs not in conflict with state law. The Zoning Administrator shall have authority to clarify, amend or revoke any provision of this subdivision as may be necessary to comply with any state law regarding ADUs or JADUs.” To this end, the City has released several Zoning Administrator memoranda summarizing pertinent sections and amendments in state laws and corresponding implementation in the City. While these memos demonstrate Los Angeles’s knowledge and practical application of current State ADU Statute, these recommendations are not an effective substitute for amendments that update the City’s municipal code as to alter municipal review processes or standards for ADUs. Government Code section 66314 requires the City to adopt provisions for the creation of ADUs into an ordinance to comply with that section. Therefore, the City must incorporate pertinent sections of the Memo into the Ordinance.

14. Section 4, Subdivision (C) – *Subject Properties* – The Ordinance states, “All new residential dwelling units and joint living and work quarters shall be required to dedicate land, pay a fee or provide a combination of land dedication and fee payment for the purpose of acquiring, expanding and improving park and recreational facilities for new residents. For the purposes of this subsection, dwelling units, Accessory Dwelling Units, Junior Accessory Dwelling Units, and joint living and work quarters shall be referred to as “dwelling units” or “residential dwelling units.””

However, Government Code section 66324, subdivision (a), states that fees charged for the construction of ADUs shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012). Additionally, Government Code section 66324, subdivision (c)(1), provides that local agencies, special districts, or water corporation shall not impose any impact fees upon ADUs less than 750 square feet and any impact fees charged to ADUs of 750 square feet or more shall be charged proportionately in the relation to the square footage of the primary dwelling unit. These statutory excerpts dictate that fee requirements for ADUs imposed by the

⁴ Gov. Code, § 66322 subd. (b).

Ordinance may only be levied according to the aforementioned Government Code sections and may only apply to ADUs over 750 square feet in size. Therefore, the City must amend its Ordinance to clarify which ADUs can be subject to fees, and under which conditions they will be charged.

15. Zoning Amendment Memo 134, (A)(1) – *ADUs Within Portions of Multi-family Structures* – The ZA Memo states that, “ADUs may be created within non-livable spaces regardless of zoning inconsistencies such as parking and open space that may result, but the number of ADUs shall not exceed 25 percent of the number of existing **permitted** units in the structure.” However, Government Code section 66323 subdivision (a)(3)(A) makes no reference to “permitted units” when determining the number of ADUs allowed. Additionally, Government Code section 66322, subdivision (b) states, that local agencies shall not deny an application for a permit to create an ADU due to the correction of unpermitted structures that do not present a threat to public health and safety. Therefore, the City must clarify that it is total number of existing units, not *permitted* units, that determines that quantity of ADUs allowed within the portions of existing family dwelling structures.
16. Zoning Amendment Memo 142, (F)(17) – *Owner Occupancy* – The ZA Memo allows a local ADU ordinance to require owner occupancy for ADUs permitted after 2025, as well as be limited to rentals of more than 30 days. Although this is permissible for ADUs, JADUs require owner occupancy pursuant to Government Code section 66333, subdivision (b). Additionally, the passage of Assembly Bill 976 will prevent jurisdictions from imposing owner-occupancy requirements on ADUs as of January 1, 2024. Therefore, the City must amend the Ordinance to clarify that the owner of the primary residence must reside in either the remaining portion of the structure or the newly created JADU.
17. Zoning Amendment Memo 142, (J)(24) – *JADU Statute* – The ZA Memo states that State Law, as of January 1, 2023, specifies that a JADU may have a separate connection to the main dwelling if there is no bathroom. However, Government Code section 66333 subdivision (e)(2) states: “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.” (Emphasis added.) The Memo’s use of “may” indicates that a separate entrance is an optional feature of JADUs lacking separate bathrooms. Conversely, the statute requires JADUs include a separate entrance, as applicable. Therefore, the City must amend LAMC 12.22A.33(b)(4) to clarify these conditions for JADU development.

In addition, the City’s ordinance references Mobile Tiny Homes (MTHs). While MTHs are an innovative type of living quarters, MTHs may not meet the statutory definition of an ADU. Pursuant to Government Code section 66314, subdivision (d)(8), ADUs must comply with “[l]ocal building code requirements that apply to detached dwellings.” Additionally, Government Code section 66313, subdivision (a), defines an ADU to mean

“an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons...It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following: (1) An efficiency unit. (2) A manufactured home, as defined in Section 18007 of the Health and Safety Code.” While some tiny homes may be considered ADUs, MTHs may be more akin to recreational vehicles, as defined in the California Health and Safety Code section 18010, than ADUs. The City should be mindful of these definitions while considering innovative housing types.

Please note that the City has two options in response to this letter.⁵ The City can either amend the Ordinance to comply with State ADU Law⁶ 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.⁷ 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.⁸

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 Nicholas Green, at Nicholas.Green@hcd.ca.gov if you have any questions.

Sincerely,



Jamie Candelaria
Senior Housing Accountability Unit Manager
Housing Policy Development Division

⁵ Gov. Code, § 66326, subd. (c)(1).

⁶ Gov. Code, § 66326, subd. (b)(2)(A).

⁷ Gov. Code, § 66326, subd. (b)(2)(B).

⁸ 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)