

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

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June 30, 2025

Cheryl Kitzerow, Community Development Director  
Community Development Department  
City of Menifee  
29844 Huan Road  
Menifee, CA 92586

Dear Cheryl Kitzerow:

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

Thank you for submitting the City of Menifee's ADU Ordinance No. 2024-384 (Ordinance), adopted February 7, 2024, to the California Department of Housing and Community Development (HCD). The Ordinance was received on March 21, 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 July 29, 2025.

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

1. Section 9.295.020 (E)(1)(a) – *Zoning* – The Ordinance lists zones in which ADUs may be constructed and includes lots zoned to allow for single-family or multi-family residential use and contains no more than one existing or proposed dwelling. The Ordinance does not include mixed used zones, which allow for single-family or multi-family 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 or prohibiting 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, including in mixed-use zones as applicable.

2. Section 9.295.020 (E)(1)(b), Section 9.295.020 (E)(2)(a)(b), Section 9.295.020 (E)(3) – *Unit Allowance* – The Ordinance permits no more than one ADU and junior accessory dwelling unit (JADU) on a single-family lot, and no more than two detached ADUs, and conversion of up to 25 percent of the number of units in the existing multifamily dwelling from existing non-livable space at any given time.

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." In addition, 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.

This permits a homeowner to create one converted ADU; one detached, new construction ADU; and one JADU, for a total of three units. 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 setback requirements of this section, the local agency is prohibited under state law from denying the application or denying a permit for a JADU.

Paragraph (3) of Government Code section 66323, subdivision (a) also requires the ministerial approval of detached ADUs within portions of an existing multifamily dwelling that are not yet used as habitable space.

In addition, Government Code section 66323, subdivision (a)(4)(A)(ii), authorizes on a lot with an existing multifamily dwelling, ministerial approval of 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) authorizes on a lot with a proposed multifamily dwelling, ministerial approval of not more than two detached accessory dwelling units." Restricting detached ADUs for existing multifamily dwellings to two units and limiting the approval of detached ADUS to only existing multifamily dwellings rather than existing and *proposed* multifamily dwellings, violates State ADU Law. The City must amend the Ordinance to specifically provide for the maximum number of state-mandated ADU combinations for both existing and proposed single and multifamily dwellings

3. Section 9.295.020 (E)(1)(c)(7) – *Separate Connections* – The Ordinance states, "Notwithstanding Government Code Section 65852.2(f)(2)(A), if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility."

Government Code section 66324, subdivision (d) provides that ADUs and JADUs created on lots with proposed or existing single family dwellings, cannot be required to install a new or separate connection unless the ADU is constructed concurrently with a new single-family dwelling, or upon a separate conveyance of the ADU. For all other ADUs a new or separate connection directly from the utility to the ADU may be required and the connection may be subject to a connection fee or capacity charge as long as that fee or charge is proportionate to the burden of the proposed ADU. The City must amend the Ordinance, remove the unlawful and ambiguous language, and reflect State law regarding utility connections as noted above.

4. Section 9.295.020 (E)(1)(h) – *Demolition* – The Ordinance states, “If a garage, carport or covered parking structure providing required parking for the primary dwelling is demolished or converted in conjunction with the construction of an accessory dwelling unit, replacement spaces for the primary dwelling shall not be required.”

However, Government Code section 66314, subdivision (d)(11), states that “A local agency may not require off-street parking spaces to be replaced when a garage, carport, covered parking structure, or *uncovered parking* space is demolished in conjunction with the construction of an ADU or converted to an ADU.” The City must amend the Ordinance to include non-replacement of *uncovered parking* when *uncovered parking* is used to construct or is converted to an ADU.

5. Section 9.295.020 (E)(2)(j) – *Architectural Design Standards* – The Ordinance states, “Accessory dwelling units shall be compatible with the architectural style of the primary dwelling. No bare metal, unpainted or unfinished structures are allowed. To determine architectural compatibility, the accessory dwelling unit structure must possess at least three of the following traits in common with the primary dwelling on-site: (i). Wall covering materials; (ii). Roofing material, (iii). Roofing pitch, (iv). Structural eaves, (v). Mass scale of structure relative to structural height., (vi). Window characteristics, (vii). Decorative treatments.”

Government Code section 66314, subdivision (b)(1) and Government Code section 66323 subdivision (b) strictly limit all standards on accessory dwelling units to objective standards involving no personal or subjective judgment by a public official and are 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. Subjective standards such as requiring “window characteristics” and “decorative treatments” violate State ADU Law. Therefore, the City must amend the Ordinance to remove all subjective standards and include only objective standards for ADU design.

6. Section 9.295.020 (E)(2)(k) – *Visibility* – The Ordinance states, “Outside stairways serving an accessory dwelling unit located on a second story shall not be constructed on any building elevation facing a public street, not including alleys.”

A local agency is prohibited from imposing any objective design or development standard that is not authorized by State ADU Law pursuant to Government Code section 66323(b). Therefore, the City must amend this section to omit this unlawful restriction.

7. Section 9.295.020 (E)(2)(m) – *Dedication* – The Ordinance states, “. Prior to issuance of a building permit, the applicant shall grant to the City an irrevocable offer of dedication for any additional right-of-way required to be consistent with the General Plan Circulation Element, or provide for access to the project site, or ensure that previous dedications were properly provided with underlying subdivisions and lot splits (prior to Subdivision Map Act requirements).”

Local governments are prohibited from imposing a condition for issuance of a development permit that is tantamount to a taking such as the dedication of private land for public use. In addition, a local agency is prohibited pursuant to Government Code section 66323(c) from conditioning approval of a permit application for an ADU or JADU upon any correction of nonconforming zoning conditions. Therefore, the City must amend the Ordinance to remove the unconstitutional and illegal requirement for dedication.

8. Section 9.295.020 (E)(2)(n) – *Public Improvements* – The Ordinance states, “Prior to issuance of a building permit, public improvements may be required where public health, safety or welfare conditions warrant additional improvements.” Pursuant to Government Code section 66315, section 66314 establishes the maximum standards that a local agency shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards shall be imposed.” Public improvements are additional standards not authorized by State ADU Law; therefore, the City must remove these unlawful requirements from the Ordinance.
9. Section 10. – *Severability* – The Ordinance states, “If any section, subsection, subdivision, 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, then such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Menifee hereby declares the Council would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that anyone or more sections, subsections, sub-divisions, sentences, clauses, phrases, or portions thereof be declared unconstitutional, invalid, or ineffective. 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 in the Ordinance is in contravention of State ADU law which requires *all* provisions or a local

government's ordinance to reflect and comply with state law. The City must remove the severability clause and amend its Ordinance to be fully compliant with state law. Otherwise, the Ordinance will be void by operation of law and the standards under Government Code sections 66310-66342 will be imposed unless and until the City complies.

The City has two<sup>1</sup> options in response to this letter. The City can either amend the Ordinance to comply with State ADU Law<sup>2</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>3</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>4</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  
Section Chief, ADU Policy  
Housing Policy Development Division

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

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

<sup>3</sup> Gov. Code, § 66326, subd. (b)(2)(B).

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