STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY GAVIN NEWSOM, *Governor*

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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June 1, 2026

Brian Bordona, Planning Director
County of Napa
1195 Third Street, 2nd Floor
Napa, CA 94559

Dear Brian Bordona:

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

Thank you for submitting the County of Napa (County) ADU Ordinance No. 1495, (Ordinance), adopted September 24, 2024, 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, 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 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 July 1, 2026, with a plan to either amend the current ordinance or adopt a resolution with findings.[1] Responses should be submitted formally on agency letterhead.

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

1. Section 18.104.180 A. – *Amended Code* – Please note, there is recent legislation that amended State ADU Law. Language relevant to these changes should be incorporated into the Ordinance as it is updated. The bills referenced below are relevant to State ADU Law:

    - Assembly Bill (AB) 130—Effective June 30, 2025
    - AB 462—Effective October 10, 2025
    - AB 1154—Effective January 1, 2026
    - Senate Bill (SB) 9—Effective January 1, 2026
    - SB 543—Effective January 1, 2026

[1] Gov. Code, § 66326, subd. (b)(2)(B).

2. Section 18.104.180 A. – *Unit Allowances* – The Ordinance refers to all ADUs as “second units” and does not establish unit allowances beyond this term. However, current State ADU Law requires combinations of multiple ADUs to be allowed. 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 units, or any combination of the following units: (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 a listing of permitted ADU types under Government Code section 66323 means 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 junior accessory dwelling (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.

   Furthermore, these units must also be combined with at least one unit subject to section 66314. Section 66317 states that a permitting agency “shall either approve or deny the application to create or serve” an application subject to section 66314, which subdivision (d)(3) states may be “either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages.” Since the statute mandates that a local agency “shall approve or deny” an application under section 66314, while also requiring that “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” under section 66323, the County must amend its Ordinance to allow the full allotment of 66323 units, and at least one unit described under section 66314 for both existing or proposed single-family and/or multifamily primary dwellings.

3. Section 18.104.180 A.10. – *Sprinklers* – The Ordinance states, “Fire sprinklers shall not be required for a second unit if they are not required for the primary residence.” Government Code section 66323, subdivision (d) further clarifies that “The construction of an accessory dwelling unit or a junior accessory

dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing multifamily dwelling." The County must add this language to this section of the Ordinance.

4. Section 18.104.180 A.11. – *Parking* – The Ordinance provides some exceptions for parking requirements for ADUs, but omits reference to the condition described in Government Code section 66322, subdivision (a)(6): "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 County must add this to the list of exceptions regarding parking standards.

5. Section 18.104.180 A.13. – *Separate Sale* – The Ordinance states, "At the time of application for a second unit, the property owner shall acknowledge in writing that (a) the second unit may not be sold separately." However, Government Code section 66341 authorizes a separate sale of an ADU when (a) the accessory dwelling unit or the primary dwelling was built or developed by a qualified nonprofit corporation; (b) there is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation; and (c) the property is held pursuant to a recorded tenancy in common agreement. In addition, the County has the ability to authorize via Ordinance an accessory dwelling unit to be sold or otherwise conveyed separate from the primary residence as a condominium under Government Code section 66342. The County must amend the Ordinance to authorize separate sale of an ADU under these circumstances.

6. Section 18.104.180 A.13. – *Covenant* – The Ordinance requires both the separate sale prohibition above to be "in writing" and then requires "…a covenant in a form approved by the county to notify future owners of the requirements of this subsection." However, a deed restriction cannot be imposed on an ADU. Government Code section 66315 states, "No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer." Although covenants are required for JADUs, they are strictly prohibited for ADUs. The County must amend the Ordinance to remove the covenant requirement for an ADU.

7. Section 18.104.180 A.14. – *Exempt Units* – The Ordinance states, "Limits on lot coverage, floor area ratio, open space, and size must permit or shall be waived to allow an eight hundred square foot detached or attached second unit sixteen feet high with four-foot side and rear yards, if the proposed second unit is in compliance with all other development standards, including but not limited to front yard setbacks." However, Government Code section 66321, subdivision (b)(3) prohibits "(a)ny 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 an accessory dwelling unit with at least 800 square feet of interior livable space…" Therefore, the County's omission of front setbacks and size relative to the primary, the specified height cap of 16 feet, and the omission of "interior livable space" as the metric of measurement render the Ordinance unlawful and inconsistent with State ADU Law. Accordingly, the County must amend the Ordinance to reflect State ADU Law.

8. Section 18.104.180 B.5. – *Distance Between Buildings* – The Ordinance states, "The maximum distance that a detached second unit may be from the nearest portion of the living area of the existing legal single-family dwelling or multi-family dwelling on the same parcel shall be five hundred feet, measured along a level, horizontal straight line, unless a greater distance is required to avoid an agricultural constraint or to meet the standards of the department relating to private water or sewer systems or to avoid an environmentally sensitive area as defined by Section 18.08.270 of this title." However, local development standards cannot preclude any unit created subject to Government Code section 66323.[2] The Ordinance must be amended to remove the unlawful standards.

9. Section 18.104.180 C.2. – *Maximum Size (Multifamily)* – The Ordinance states that for multifamily primaries, "The total floor area of an attached second unit shall not exceed fifty percent of the existing primary dwelling or eight hundred square feet, whichever is greater." However, this is another unlawful development standard that is strictly prohibited under Government Code section 66323. Furthermore, maximum size allowances for units subject to section 66314 are, as stated in section 66321, subdivision (b)(2), 850 square feet of interior livable space or 1,000 square feet of interior livable space for units with more than one bedroom. The County must amend the Ordinance to remove the unlawful standards and to reflect State ADU Law.

10. Section 18.104.180 D. – *Internal Connection (JADUs)* – The Ordinance omits reference to the conditions required by Government Code section 66333, subdivision (e)(2): "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 County must amend the Ordinance to reflect this requirement of State ADU Law.

11. Section 18.104.180 D.3. – *Attached Garage (JADUs)* – The Ordinance states, "The junior accessory dwelling unit must be created within the walls of an existing

[2] Gov. Code, § 66321, subd. (b).

or proposed primary dwelling." However, Government Code section 66333, subdivision (d) expands on this to clarify that, "For purposes of this subdivision, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence." The County must amend the Ordinance to include authorization for JADUs to be created in attached garages.

12. Section 18.104.180 D.6 – *Owner Occupancy (JADUs)* – The Ordinance states, "At the time of application for a junior accessory dwelling unit, the property owner shall acknowledge in writing that (a) the owner must occupy as a principal residence either the primary dwelling or the junior accessory dwelling unit, unless the owner is another governmental agency, land trust, or housing organization…" However, Government Code section 66333, subdivision (b) only authorizes restrictions on owner occupancy "(i)f the junior accessory dwelling unit has shared sanitation facilities with the existing structure…" The County must amend the Ordinance to reflect this limited instance of requiring owner occupancy.

The County has two options in response to this letter.[3] The County can either 1) amend the Ordinance to comply with State ADU Law[4] or 2) adopt the Ordinance without changes and include findings in its resolution accompanying the Ordinance that explain the reasons the County believes that the Ordinance complies with State ADU Law despite HCD's findings.[5] If the County fails to take either course of action, or if HCD finds that the newly adopted Ordinance remains out of compliance with State ADU Law despite the County's findings and explanations, HCD must notify the County and may notify the California Office of the Attorney General that the County is in violation of State ADU Law.[6]

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 Mike Van Gorder at Mike.VanGorder@hcd.ca.gov if you have any questions or wish to discuss any of HCD's findings.

Sincerely,

Jamie Candelaria

Jamie Candelaria
Section Chief, ADU Policy
Housing Accountability Unit

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[3] Gov. Code, § 66326, subd. (b)(2).
[4] Gov. Code, § 66326, subd. (b)(2)(A).
[5] Gov. Code, § 66326, subd. (b)(2)(B).
[6] Gov. Code, § 66326, subd. (c)(1).