

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

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October 29, 2024

Jonathan Lait, Director
Planning and Development Services
City of Palo Alto
250 Hamilton Ave
Palo Alto, CA 94301

Dear Jonathan Lait:

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

Please Note: As of March 25, 2024, with the Chaptering of Senate Bill (SB) 477 (Chapter 7, Statutes of 2024), the sections of Government Code relevant to State ADU and Junior Accessory Dwelling Unit (JADU) Law have been re-numbered (Enclosure 1).

Thank you for submitting the City of Palo Alto's (City) ADU Ordinance No. 5585 (Ordinance), adopted June 5, 2023, 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 does not comply with State ADU and JADU Laws in the manner noted below. Under 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 November 28, 2024.

The Ordinance addresses many statutory requirements; however, HCD finds that the Ordinance does 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 18.09.030 (a) iii. – *Height* – The Ordinance provides for “A detached, new construction ADU on a lot with a proposed or existing single-family dwelling, provided the ADU does not exceed 800 square feet, **sixteen feet in height**, or four-foot side and rear (i.e. interior) setbacks.” However, Government Code

sections 66321, subdivision (b)(4)(B), which is referenced in section 66323, subdivision (a)(2)(B) as would govern a unit described here in the Ordinance, requires a height allowance of “18 feet for a detached accessory dwelling unit 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... A local agency shall also allow an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit.” Footnote 5 in Table 1 of Section 18.09.030 provides for these allowances, the City must amend the Ordinance to to comply with State ADU law and avoid contradictory provisions.

3. Section 18.09.030 Table 1 – *Unit Allowance* – The Ordinance states in Single Family residence only “1 ADU and 1 JADU” are permitted. This prohibits the combination of units subject to Government Code section 66323, subdivision (a)(1) and (a)(2).

Government Code section 66323 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.” Subparagraph (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 an enumeration of by-right ADU types permitted indicate 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 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.

Limiting single-family primary dwelling lots to one ADU and one JADU prevents property owners from creating ADUs by-right under section 66323. Therefore, the City must amend the Ordinance to allow for all by-right ADU combinations.

4. Section 18.09.030 (d) – *Delay of Enforcement* – The Ordinance states, “The establishment of accessory dwelling units and junior accessory dwelling units pursuant to this section shall not be conditioned on the correction of non-conforming zoning conditions; provided; however, that nothing in this section shall limit the authority of the Chief Building Official to require correction of building standards relating to health and safety.” However, Government Code

section 66331 states, “In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in subdivision (a) or (b), a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code: (a) The accessory dwelling unit was built before January 1, 2020. (b) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.” Therefore, the City must add language allowing delay of enforcement.

5. Section 18.09.030 (e) – *Sprinklers* – The Ordinance states, “The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.” However, Government Code section 66323, subdivision (c) states, “The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers 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 multifamily dwelling.” Therefore, City must add the second sentence in the preceding citation to the Ordinance to be consistent with State ADU law.
6. Section 18.09.030 (g) – *JADUs and Interior Entry* – The Ordinance states, “Except for JADUs, attached units shall not have an interior access point to the primary dwelling.” However, Government Code section 66633, 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.” Therefore, the City must amend the Ordinance accordingly.
7. Section 18.09.030 (h) – *Conversion and Expansion* – Th Ordinance states, “Conversion of an existing accessory structure pursuant to Government Code section 65852.2(e)(1)(A) may include reconstruction in-place of a non-conforming structure, so long as the renovation of reconstruction does not increase the degree of non-compliance, such as increased height, envelope, or further intrusion into required setbacks. Any portion of an ADU that exceeds the envelope of the existing accessory structure shall be subject to Section 18.09.040.” However, Government Code section 66323, subdivision (a)(1)(A) provides for, “an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.” The City must amend the Ordinance to allow for such an expansion without reference to Section 18.09.040.

8. Section 18.09.030 (j) and 18.09.040 (m)2. – *Separate Sale*¹ – The Ordinance notes that ADUs “shall not be sold separately from the primary residence.” 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 nonprofit corporation, among other things. The City must note the exception.
9. Section 18.09.030 (m), 18.09.040 (g) and (j) 2.C. – *Tree Ordinance* – The Ordinance makes several references to Chapter 8.10, the City’s Tree and Landscape Preservation and Management regulations, and requires that elements of ADU development conform to Chapter 8.10. However, Government Code section 66317, subdivision (c) states that “No local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this section.” The City should amend the Ordinance to ensure that compliance with this ordinance section will not delay or cause the denial of an ADU or JADU building permit or use permit.
10. Section 18.09.040 (a), Table 2– *JADUs and Development Standards* – The Ordinance describes JADUs in the section “Units Subject to Local Standards” and creates governance of JADUs that “do not qualify for approval under section 18.090.030.” However, all JADUs are created pursuant to Government Code section 66323, subdivision (a)(1), and would therefore be approved under section 18.090.030. the City must remove references to JADUs in this section.
11. Section 18.09.040 (c) – *Multifamily ADU Allowances* – In the “Units Subject to Local Standards” section, the Ordinance states, “A single-family dwelling shall exist on the lot or shall be constructed on the lot in conjunction with the construction of an ADU/JADU.” However, Government Code section 66314, subdivision (a)(2) permits ADUs when “The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.” The City must amend the Ordinance to include multifamily as well.
12. Section 18.09.040 (h) – *Local Historic Register* – The Ordinance applies special requirements to properties “listed on the Palo Alto Historic Inventory.” However, Government Code section 66314, subdivision (b)(1) states that ADU ordinances may “Impose objective standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources.” Therefore, the use of a local historic register such as the Palo Alto

¹Please note that Government Code section 66342 gives local jurisdictions the option of adopting an ordinance to provide for the separate conveyance of an ADU from its primary dwelling.

Historic Inventory would be inconsistent with State ADU Law. The City must remove this reference.

13. Section 18.09.040 (j)(4) – *“Street Side Setbacks”* – The Ordinance states, “For corner lots developed as a single-family home only, when an existing or proposed primary dwelling unit is expanded or constructed simultaneously with the construction of a new ADU/JADU, all structures may be built to a 10-foot street-side setback and a 16-foot front yard setback, regardless of the presence of a special setback, unless a fire or life-safety regulation requires a greater setback.” A street side setback for a corner lot is in essence a front setback. Government Code section 66321, subdivision (b)(3) states that a front setback may not preclude the development of an 800 square foot unit. The City must note the exception.

14. Section 18.09.040 (l) – *Parking Exceptions* – The Ordinance does not provide for exemptions to parking requirements pursuant to Government Code section 66322, subdivisions (a)(1) through (a)(6):

“(1) Where the accessory dwelling unit is located within one-half of one mile walking distance of public transit.

(2) Where the accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) Where the accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(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.

Therefore, the City must amend the Ordinance to add the required exemptions.

15. 18.09.040 (l)(2) – *Garage Conversion and Replacement Parking* – The Ordinance states, “Replacement parking is required when an existing attached garage, carport, or covered parking structure is converted to a JADU....” Local agencies may not require parking as a condition to permitting a JADU, even when the JADU is converted from an attached garage.² The City must amend the Ordinance accordingly.

² Gov. Code, § 66334, subd. (a).

16. 18.09.050 (a) - *JADUs in Attached Garages* – The Ordinance states, “A junior accessory dwelling unit may only be created on a lot in a single-family residential zone with an existing or proposed single family residence. A junior accessory dwelling unit shall be attached to or created within the walls of an existing or proposed primary dwelling.” However, Government Code section 66333, subdivision (d) states that for the purposes of siting JADUs, “enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” Therefore, the City must amend the Ordinance to include a reference to enclosed uses.
17. 18.09.050 (b)(i) and (ii) – *JADU Kitchen Facilities* – The Ordinance states, “A cooking facility with appliances shall mean, at minimum a one burner installed range, an oven or convection microwave, a 10 cubic foot refrigerator and freezer combination unit, and a sink that facilitates hot and cold water.” It also states “[a] food preparation counter and storage cabinets shall be of reasonable size in relation to a JADU if they provide counter space equal to a minimum 24-inch depth and 36-inch length.” However, Government Code section 66333, subdivision (f) requires “the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following: (1) A cooking facility with appliances. (2) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.” The terms “appliances” and “reasonable size” are broad provisions in statute. Therefore, the Ordinance is more stringent than state JADU law. The City must remove the quoted language.
18. 18.09.050 (b) iii. – *JADU Entry* – The Ordinance states, “JADUs may share sanitation facilities (bathrooms, laundry facilities, etc.) with the primary unit.” 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.” Therefore, the City must amend the Ordinance to comply with State ADU Law.
19. 18.09.050 (e) – *JADU Term Limits* – The Ordinance requires that JADU deed restrictions “[do] not permit short-term rentals”. However, Government Code section 66333, subdivision (c) requires only “(1) 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. (2) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this article.” No additional provisions may be added to the listed deed restrictions in statute. JADU Law does not provide for rental limits to JADUs and therefore the City may not require these term limits. Therefore, the City must amend the Ordinance accordingly.

20.18.04.030 (a)(75)(A) – *Kitchen Requirements* – The Ordinance requires “major appliances” and then states, “For ADUs, major appliances shall mean a minimum two burner installed range, and an oven or convection microwave, as well as a minimum 11 cubic foot freezer and refrigerator combination unit. Kitchens shall also include counter space for food preparation equal to a minimum 24-inch depth and 36-inch length, and a sink that facilitates hot and cold water.” However, Government Code section 66313, subdivision (a) defines ADUs as needing only “permanent provisions for living, sleeping, eating, cooking, and sanitation” and does not describe them any further. Additionally, section 66313, subdivision (a)(1) allows ADUs to be an efficiency unit, which Health and Safety Code section 17958.1 states may have “partial kitchen” facilities. Therefore, the establishment of appliance and counterspace minimums are inconsistent with State ADU Law. The City must amend the Ordinance accordingly.

Please note that the City has two options in response to this letter.³ The City can either amend the Ordinance to comply with State ADU Law⁴ 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.⁵ 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.⁶

HCD appreciates the City 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 mikevangorder@hcd.ca.gov if you have any questions.

Sincerely,



Jamie Candelaria
Senior Housing Accountability Unit Manager
Housing Policy Development Division

³ Gov. Code, § 66326, subd. (c)(1).

⁴ Gov. Code, § 66326, subd. (b)(2)(A).

⁵ Gov. Code, § 66326, subd. (b)(2)(B).

⁶ 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)