

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

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October 21, 2024

Lina Velasco, Community Development Director
Community Development
City of Richmond
450 Civic Center Plaza, 2nd Floor
Richmond, CA 94804

Dear Lina Velasco:

RE: Review of Richmond'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 Richmond's (City) ADU Ordinance No. 27-20 (Ordinance), adopted November 10, 2020, 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 20, 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 15.04.104.020 – *Definition* – The Ordinance defines ADU as "...including living, sleeping, eating, cooking, and sanitation facilities, on the same lot as a proposed or existing single-family dwelling or existing multifamily dwelling." However, Government Code section 66313, subdivision (a) requires "permanent provisions". Therefore, the City must amend the Ordinance to require "permanent provisions" for "living, sleeping, eating, cooking, and sanitation facilities".

3. Sections 15.04.104.020, 15.04.610.020 D.5.f. – *JADU and Garages* – The Ordinance defines a JADU as “An accessory dwelling unit that is no more than 500 square feet in size, includes an efficiency kitchen consistent with building code standards, and is contained entirely within a proposed or existing single-family dwelling.” However, Government Code section 66333, subdivision (d) states “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 clarify that JADUs may be created within enclosed uses, such as attached garages, to comply with State ADU Law.
4. Sections 15.04.201.030 A.; 15.04.201.050 B.; 15.04.610.020 C.3.e, D.1.c., D.1.d., D.3.a., D.4.a.ii., D.4.b.ii., D.5.a.i. – *Height* – The Ordinance makes numerous references to a height limit of 16 feet. However, Government Code section 66321, subdivision (b)(4) permits heights up to 16, 18, 20 or 25 feet, under certain conditions. The City must ensure the Ordinance complies with height standards provided in State ADU Law.
5. Section 15.04.610.020 C.4. – *Parking* – The Ordinance states, “No additional parking shall be required...” before introducing the categories of parking exceptions. However, Government Code section 66322, subdivision (a), requires that “A local agency shall not impose **any parking standards** for an accessory dwelling unit in any of the following instances....” The phrase “additional parking” in the Ordinance implies the application of underlying parking standards which would be inconsistent with State ADU Law.
6. Additionally, the Ordinance omits reference to the conditions of subdivision (a)(6), which prohibit any parking standards “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 comply with the parking standards established in State ADU Law.

7. Section 15.04.610.020 B. – *Denial* – The Ordinance states, “All accessory dwelling unit and junior accessory dwelling unit applications shall be approved or disapproved within 60 days of receiving a completed application...” However, Government Code section 66317, subdivision (b) requires that upon denial, local jurisdictions must “...return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.” Therefore, the City must amend the Ordinance to reflect the entirety of the approval and denial process to comply with State ADU Law.
8. Section 15.04.610.020 C.1. – *Location Restrictions* – The Ordinance states, “An accessory dwelling unit shall be located behind the primary dwelling.” This has the effect of extending exclusively for the purposes of ADU development, a

required front setback to the rear line of a primary structure. However, local development standards may not preclude any unit subject to Government Code section 66323. The City must amend the Ordinance to note the exceptions.

Additionally, for units subject to local development standards pursuant to section 66314, section 66321, subdivision (b)(3) prohibits “Any 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 at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” Therefore, the application of front setbacks cannot preclude the development of an 800 square foot ADU subject to Government Code section 66321, subdivision (b)(3). The City must amend the Ordinance to allow at least an 800 square foot ADU in front of the primary dwelling.

9. Section 15.04.610.020 C.2. – *Efficiency Kitchen* – The Ordinance states, “An accessory dwelling unit and junior accessory dwelling unit must contain its own kitchen.” However, Government Code section 66313, subdivision (a)(1) allows an ADU to be “an efficiency unit” and the Health and Safety Code 17958.1 allows having a “partial kitchen”. The City must note the exception.
10. Section 15.04.610.020 C.5. – *Deed Restriction* – The Ordinance requires a recorded deed restriction for ADUs to restrict separate sale, size and attributes, and other provisions. However, 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.” A deed restriction would be an “additional standard” and thus cannot be imposed. Therefore, the City must amend the Ordinance to remove this section.
11. Section 15.04.610.020 C.3.f. – *Local Historic Register* – The Ordinance states, “The architectural treatment of an ADU to be constructed on a lot that has an identified historical resource listed on the federal, state, or **local register** of historic places shall comply with all applicable ministerial requirements imposed by the Secretary of the Interior.” However, Government Code section 66314, subdivision (b)(1) states that local jurisdictions may, “Impose standards on accessory dwelling units that... prevent adverse impacts on any real property that is listed in the California Register of Historic Resources.” State ADU Law does not include local registers. The City must remove the references to any other historic district, register, or overlay zone.
12. Section 15.04.610.020 D.1.f. – *“Legally in Existence”* – The Ordinance states, “A portion of a single-family dwelling or detached accessory structure legally in existence may be converted into an accessory dwelling unit....” However,

Government Code section 66314, subdivision (d)(3) and section 66323, subdivisions (a)(1) and (a)(3), do not require that the conversion of existing space be 'legally in existence'. The City must amend the Ordinance to remove the phrase "legally in existence".

13. Section 15.04.610.020 D.4.a. and b.— *Unit Mixture* – The Ordinance states, "...one of the following categories of accessory dwelling units shall be permitted on a lot..." This phrase is used before the introduction of all four section 66323 ADU types, separated by primary unit type. Later, it states that "A junior accessory dwelling unit is not permitted on a lot with an accessory dwelling unit unless the unit is..." and then refers to the units described in section 66323. This limits ADU development to one format per lot.

However, 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. HCD notes that the Legislature, in creating the list, did not use "or" nor "one of" to indicate only one or another would be applicable to the exclusion of the other. Limiting single-family lots to one ADU would prevent 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.

14. Section 15.04.610.020 D.5.a. – *JADU Allowances* – The Ordinance states, "A junior accessory dwelling unit is not permitted on a lot with an accessory dwelling unit unless the unit is..." and then refers to the units described in section 66323. However, Government Code section 66333, subdivision (a) permits one JADU "...per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot." One JADU is permitted per lot in a single-family zone regardless of what type of ADU (detached, attached or

conversion) is present on the lot. Therefore, the City must amend the Ordinance to remove this restriction.

15. Section 15.04.610.020 D.5.a.ii. – *JADUs and Accessory Structures* – The Ordinance section on JADUs states that “an accessory dwelling unit within the proposed or existing space of a single-family dwelling or existing space of an accessory structure. The accessory dwelling unit within the existing space of an accessory structure may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure to accommodate ingress and egress. The accessory dwelling unit shall have exterior access from the single-family home. The setbacks must be sufficient for fire and safety.” However, Government Code section 66333, subdivision (d) requires that JADUs be created “...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.” JADUs may not be located in an accessory structure, and the expansion of 150 square feet for ingress does not apply to JADUs. The City must amend the Ordinance to comply with State ADU Law.
15. Section 04.610.020 D.5.e. – *JADUs and Deed Restrictions* – The Ordinance states “A deed restriction shall be completed and recorded, in compliance with paragraph D(5) above.” However, the deed restriction omits conditions required in Government Code section 66333, subdivision (c): “(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.” Therefore, the City must amend the Ordinance to remove the requirement for a deed restriction.

Please note that the City has two options in response to this letter.¹ The City can either amend the Ordinance to comply with State ADU Law² 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.³ 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.⁴

¹ Gov. Code, § 66326, subd. (c)(1).

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

³ Gov. Code, § 66326, subd. (b)(2)(B).

⁴ Gov. Code, § 66326, subd. (c)(1).

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 mike VanGorder at Mike.VanGorder@hcd.ca.gov if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Jamie Candelaria".

Jamie Candelaria
Senior Housing Accountability Manager
Housing Policy Development Division

Enclosure

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)