

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

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May 31, 2024

Roberta Feliciano, Planning and Building Director
Department of Planning & Building
Town of Ross
31 Sir Francis Drake Boulevard
Ross, CA 94957

Dear Roberta Feliciano :

**RE: Review of the Town of Ross'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 Town of Ross (Town) ADU Ordinance No. 708 (Ordinance), adopted November 12, 2020, to the California Department of Housing and Community Development (HCD). The Ordinance was received on July 12, 2023. 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 State ADU and JADU laws in the manner noted below. Under that statute, the Town has up to 30 days to respond to these findings. Accordingly, the Town must provide a written response to these findings no later than July 1, 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. Section 18.42.020 – *Definitions* – The Ordinance states, “Existing structure” means an existing permitted or otherwise legal single-family residence, including all fully enclosed areas such as a partial basement, an attached garage, or an accessory structure that can be made safety habitable under building codes.” However, Government Code section 66322 states, “Notwithstanding any other law, and whether or not the local agency has adopted an ordinance governing accessory dwelling units in accordance with Section 66314... The local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit.” As such, a permit for an ADU shall not be denied based on building code violations or unpermitted structures. Additionally, Government Code

section 66332, a local agency shall not deny a permit for an unpermitted accessory dwelling unit that was constructed before January 1, 2018, due to either of the following:

- (1) The accessory dwelling unit is in violation of 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.
- (2) The accessory dwelling unit does not comply with this article or any local ordinance regulating accessory dwelling units."

Requiring that a structure on the lot be permitted to be considered existing would not be compliant with State ADU Law. Therefore, the Town must amend this section to remove this requirement.

2. Section 18.42.030, 18.42.050 (a) – *JADUs in Multifamily* – The Ordinance states, "An ADU or JADU is allowed on any parcel in a single family residential or multifamily residential zoning district with a primary unit, subject to the issuance of an ADU permit." However, JADUs may not be constructed within multifamily residential zones, pursuant to Government Code section 66333, which states, "Notwithstanding Article 2 (commencing with Section 66314), a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones." Allowing for the construction of JADUs in multifamily residential zones would not be in compliance with State JADU Law. Therefore, the Town must amend this section to specify that JADUs may not be constructed within multifamily residential zones.
3. Section 18.42.040 (a)(2) – *Remedy of Denial* – The Ordinance states, "The Planning Department's decision shall be in writing and shall state the reasons for approval or denial." 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" and "the permitting agency shall... 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." Neglecting to include a 60-day timeline for ADU applications, and only stating the reasons for denial without the description of how the application can be remedied would not be in compliance with State ADU Law. Therefore, the Town must amend this section to add these provisions.
4. Section 18.42.055(h) – *Tree Removal* – The Ordinance states, "Any tree over 12 inches in circumference removed in conjunction with the construction of an ADU must be replaced by a 24-inch box tree on the project site, unless it is determined by the Fire Marshal that replacement planting is not feasible." However, Government Code section 66314, subdivision (b)(1) states, "The ordinance shall... 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. These standards shall not include requirements on minimum lot size."

The feasibility requirement for tree replacement is not an objective standard, as required by State ADU Law. “Objective standards” means standards that involve no personal or subjective judgment by a public official and are uniformly 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.¹ Therefore, the Town must amend this section to remove the subjective criteria.

5. Section 18.42.050 (c) – *Owner Occupancy* – The Ordinance states, “Owner occupancy is not required for either the primary residence or the ADU/JADU.” However, Government Code section 66333, subdivision (b) states that the ordinance, “Require owner-occupancy in the single family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.” Pursuant to this subdivision, a single-family dwelling with a JADU must require owner occupancy in either the primary unit or the JADU, with exceptions. Therefore, the Town must amend this section to add these restrictions and exceptions.
6. Section 18.42.050 (e) – *Separate Sale* – The Ordinance states, “The ADU/JADU may be rented but shall not be sold independently of the primary dwelling on the parcel.” However, Government Code section 66341 creates a narrow exception to allow separate conveyance of an ADU to a qualified buyer. Preventing the sale of ADUs pursuant to Government Code section 66341 is not in compliance with State ADU Law. Therefore, the Town must allow for this exception. Please note that recent amendments to State ADU Law now provide for a local agency to allow the separate sale or conveyance of a primary dwelling and an ADU as condominiums pursuant to Government Code section 66342.
7. Section 18.42.055 (c), 18.42.060, 18.42.075 (b)(2) and (d) – *Heights* – The Ordinance states, “An attached ADU or detached ADU shall not exceed 16 feet in height.” However, Government Code section 66321, subdivision (b)(4) defines the minimum heights which must be allowed for, as follows:
 - (A) A height of 16 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit.
 - (B) A height 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, as those terms are defined in Section 21155 of the Public Resources Code. 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.

¹ Gov. Code, § 66313, subd. (h).

(C) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.

(D) A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling. This subparagraph shall not require a local agency to allow an accessory dwelling unit to exceed two stories.”

These provisions are not detailed or allowed in the Ordinance and limiting the height to 16 feet for all ADUs would not follow State ADU Law. Therefore, the Town must amend this section to allow for these provisions.

9. Section 18.42.055 (Table 1), 18.42.060 – *Floor Area, Guaranteed Allowances* – Table 1 of the Ordinance details maximum floor area for various types of attached and detached ADUs, including limitations of “50 percent of the existing primary dwelling or 850 sq. ft., whichever is less...” for attached ADUs. Additionally, 18.42.060 states “All standards related to size, limits on lot coverage, floor area ratio, and/or minimum lot size that apply to an ADU shall not prohibit an ADU with up to 800 square feet of floor area, a height of up to 16 feet, and four-foot side and rear yard setbacks, provided the ADU complies with all other applicable standards.” However, Government Code 66321, subdivision (b)(2) states, “...a local agency shall not establish by ordinance... A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(A) Eight hundred fifty square feet.

(B) One thousand square feet for an accessory dwelling unit that provides more than one bedroom.” The Town must amend the Ordinance to allow for these maximum floor areas specified in State ADU Law.

Additionally, Government Code section 66321, subdivision (b)(3), states that an ordinance may not establish, “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.” Restricting an attached ADU to 50 percent of the total area of the primary and neglecting to include the restrictions on zoning clearances, additional review, and front setback requirements to allow for an 800 square foot minimum attached or detached ADU, violates Government Code section 66321, subdivisions (b)(2) and (b)(3). Therefore, the Town must amend these sections to allow for these provisions.

10. Section 18.42.055 (f) – *Parking Exceptions* – The Ordinance states, “Off-street parking is not required for an ADU in any of the following instances...” and lists five parking exceptions which are consistent with Government Code section 66322, subdivision (a)(1) through (a)(5). However, Government Code section 66322, subdivision (a)(6)

includes another exception which reads, “The local agency shall not impose any parking standards for an accessory dwelling unit... 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.” Excluding this final exception would not follow State ADU Law. Therefore, the Town must amend this section to include the parking exception in Government Code section 66322, subdivision (a)(6).

11. Section 18.42.065(a), 18.42.075(a), (b) – *Number of ADUs* – The Ordinance provides restrictions on the number of units allowed on a lot. The Ordinance states, “The town council may grant an exception to the number of ADUs permitted on a lot or parcel to permit two ADUs on a parcel or lot, provided the parcel or lot is at least one acre in size...” followed by “One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply...” and “One detached, new construction, ADU that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The ADU may be combined with a JADU...” However, 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... One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling... One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in paragraph (1).” 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 lots with existing or proposed single-family dwellings. 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 the 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 the subdivision, the local agency cannot deny the applicant, nor 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, totaling three units. This standard also applies to ADUs created pursuant to Government Code section 66323, subdivisions (a)(3) and (a)(4) on lots with proposed or existing multifamily dwellings according to specified requirements. Limiting single-family lots to fewer ADUs would prevent property owners from creating ADUs by-right under subdivision (a). Therefore, the Town must revise the Ordinance to remove these restrictions.

12. Section 18.42.055 (m), 18.42.090 (b), (d) – *Prior Discretionary Approvals, Nonconformance* – The Ordinance states, “The ADU shall not conflict with any other

requirements associated with prior land use entitlements (e.g., Design Review, Nonconformity Permit) granted for the subject property, unless such requirements have been amended through required approval processes.” The Ordinance later states, “Nonconforming ADU previously granted a use permit or administrative approval may continue in use subject to the conditions of their original approval and the provisions of Chapter 18.44 of this code... It is declared that any non-conforming ADU not previously granted a conditional use permit and not given conforming status prior to June 1, 2012 or issued a certificate of conformity, shall constitute a public nuisance, and such nuisance may be abated as provided by law.” and goes on to state “An illegal ADU is an ADU which is not an approved ADU, nonconforming ADU, or is in violation of the Declaration of Deed Restrictions or the Declaration of Rent Restrictions. The Town Manager is authorized to pursue any remedies provided by law against the owner of an illegal ADU or an ADU not maintained in conformance with this Chapter, including but not limited to... Revocation of the ADU Permit... Enforcement. Failure to comply in any way with the provisions of this chapter, approved plans, or conditions for application approval constitutes grounds for the town to immediately stop work related to the noncompliance until the matter is resolved or require that the noncompliance be remediated.” However, Government Code section 66332, subdivision (a) states, “Notwithstanding any other law... a local agency shall not deny a permit for an unpermitted accessory dwelling unit that was constructed before January 1, 2018, due to either of the following:

- (1) The accessory dwelling unit is in violation of 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.
- (2) The accessory dwelling unit does not comply with this article or any local ordinance regulating accessory dwelling units.”

Existing, but unpermitted or illegally constructed ADUs which were constructed prior to January 1, 2018 may not be denied due to nonconformance or noncompliance with existing ordinances. Precluding ADUs due to nonconformance, noncompliance with current ordinances, or previous discretionary processes would not be compliant with State ADU Law. Therefore, the Town must amend this section to remove restrictions that are not a threat to health and safety.

13. Section 18.42.060, 18.42.065(c), (d) – *Exception to Height, Stories* – The Ordinance states, “All standards related to size, limits on lot coverage, floor area ratio, and/or minimum lot size that apply to an ADU shall not prohibit an ADU with up to 800 square feet of floor area, a height of up to 16 feet, and four-foot side and rear yard setbacks, provided the ADU complies with all other applicable standards.” In addition to, “The town council may grant an ADU height increase to two stories with a maximum building height of thirty feet at any point when measured from either existing or finished grade, whichever is lower...” and “The town council may grant an exception to the location standard to allow a newly constructed ADU above an existing first floor.” However, Government Code section 66321, subdivision (b)(4) states that no local ordinance shall establish, “Any height limitation that does not allow at least the following, as applicable:

(A) A height of 16 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit.

(B) A height 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, as those terms are defined in Section 21155 of the Public Resources Code. 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.

(C) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.

(D) A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling. This subparagraph shall not require a local agency to allow an accessory dwelling unit to exceed two stories.”

Without exceptions, the height maximum for an ADU can be no lower than the maximums as defined above, and attached ADUs may not be restricted to a single-story. Therefore, the Town must remove the requirement of any discretionary review to meet these standards.

14. Section 18.42.070(b) – *JADU Requirements* – The Ordinance states, “The JADU must be created within the existing walls of an existing single-family residence and must include an existing bedroom.” However, Government Code section 66333, subdivision (d) states that an ordinance must “require a permitted junior accessory dwelling unit to be constructed within the walls of the proposed or existing single-family residence. 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.” By including garages in the allowable space, State JADU Law explicitly permits JADUs in areas other than bedrooms. Therefore, the Town must remove this additional requirement and amend the Ordinance to allow for JADUs in all enclosed uses within the residence, including an attached garage.

15. Section 18.42.070(d) – *JADU Bathrooms* – The Ordinance states, “A JADU may include separate sanitation facilities or may share sanitation facilities with the existing structure.” While this is true, 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.” State JADU Law has a specific requirement for JADUs to have interior access between the primary home and the JADU if the JADU does not have a separate bathroom facility. Therefore, the Town must include this requirement.

16. Section 18.42.075(d) – *Multifamily ADU allowances* – The Ordinance states, “Not more than two ADUs that are located on a lot that has an existing multifamily dwelling but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.” However, Government Code section 66323, subdivision (a)(4) states that a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create, “...Not more than two accessory dwelling units that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limitation in subparagraph (A), (B), or (C) of paragraph (4) of subdivision (b) of Section 66321, as applicable, and rear yard and side setbacks of no more than four feet...” Restricting multifamily ADUs as defined under Government Code section 66323, subdivision (a)(4) to only existing lots, or restricting their height more than the height limitations present in subparagraph (A), (B), or (C) of paragraph (4) of subdivision (b) of Section 66321 would not comply with State ADU Law. Therefore, the Town must amend this section to allow for ADUs on lots with proposed multifamily dwellings.

In response to the findings in this letter, and pursuant to Government Code section 66326 subdivision (b)(2), the Town must either amend the Ordinance to comply with State ADU Law or adopt the Ordinance without changes. Should the Town choose to adopt the Ordinance without the changes specified by HCD, the Town must include findings in its resolution that explain the reasons the Town finds that the Ordinance complies with State ADU Law despite the findings made by HCD. Accordingly, the Town’s response should provide a plan and timeline to bring the Ordinance into compliance.

Please note that, pursuant to Government Code section 66326, subdivision ((c), if the Town fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD may notify the Town and the California Office of the Attorney General that the Town is in violation of State ADU Law.

HCD appreciates the Town’s efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the Town in fully complying with State ADU Law. Please feel free to contact Tyler Galli, of our staff, at (916) 776-7613 or at tyler.galli@hcd.ca.gov.

Sincerely,



Jamie Candelaria
Senior Housing Accountability Unit Manager
Housing Policy Development Division

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)