

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

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May 6, 2026

Albert Savay, Community Development Director
Community Development
City of San Carlos
600 Elm Street
San Carlos, CA 94070

Dear Albert Savay:

**RE: Review of San Carlos' Accessory Dwelling Unit (ADU) Ordinance under
State ADU Law (Gov. Code, §§ 66310 – 66342)**

Thank you for submitting the City of San Carlos (City) ADU Ordinance No. 1604 (Ordinance), adopted November 13, 2023, to the California Department of Housing and Community Development (HCD). The Ordinance was received on December 12, 2023. 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 June 5, 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. *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. The City must amend the Ordinance to refer to the correct Government Code sections.
2. 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

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

- AB 1154 – Effective January 1, 2026
 - Senate Bill (SB) 9 – Effective January 1, 2026
 - SB 543 – Effective January 1, 2026
3. Section 18.23.210 B.1. – *JADU Size* – The Ordinance defines “Junior Accessory Dwelling Unit” (JADU) as “[a] unit that is no more than five hundred (500) square feet in size and contained entirely within a single-family dwelling unit...” However, as of January 1, 2026, Government Code section 66313, subdivision (d) has been updated to define a JADU as “a unit that is no more than 500 square feet of interior livable space in size and contained entirely within a single-family residence...” Therefore, the City must amend the Ordinance to include “interior livable space” in the definition of a JADU.
4. Section 18.23.210 B.3. – *Size Requirements* – The Ordinance defines “Statewide Exemption ADU” as “an ADU of up to 800 square feet, 16 feet in height (18 feet near transit or when the primary dwelling has more than one story, 25 feet or the underlying zoning height limit, whichever is lower, for an attached ADU), as potentially limited by a local agency, and with four-foot side and rear yard setbacks. State ADU Law requires that no lot coverage, floor area ratio, open space, front setback or minimum lot size will preclude the construction of a statewide exemption ADU.”
- However, as of January 1, 2026, Government Code section 66323, subdivision (a)(2) was updated to specify that the floor area limitation of a detached ADU developed under this section must be “not more than 800 square feet of livable space.” State ADU Law defines “livable space” as “a space in a dwelling intended for human habitation, including living, sleeping, eating, cooking, or sanitation.” Therefore, the City must amend the Ordinance to include “livable space” in the specifications for new, detached Statewide Exemption ADUs.
5. Section 18.23.210 B.3. – *Conversion Size Requirements* – The Ordinance defines “Statewide Exemption ADU” as “an ADU of up to 800 square feet, 16 feet in height (18 feet near transit or when the primary dwelling has more than one story, 25 feet or the underlying zoning height limit, whichever is lower, for an attached ADU), as potentially limited by a local agency, and with four-foot side and rear yard setbacks. State ADU Law requires that no lot coverage, floor area ratio, open space, front setback or minimum lot size will preclude the construction of a statewide exemption ADU.” However, limiting the size of all Statewide Exemption ADUs to 800 square feet is inconsistent with State ADU Law. Government Code section 66323, subdivision (a) requires ministerial approval of a unit that conforms to that subdivision without reference to maximum square footage. Therefore, the City must amend this section to include conversion ADUs that do not have a size limitation.
6. Section 18.23.210 B.3. – *Subjective Height Allowance* – The Ordinance defines “Statewide Exemption ADU” as “an ADU of up to 800 square feet, 16 feet in height (18 feet near transit or when the primary dwelling has more than one

story, 25 feet or the underlying zoning height limit, whichever is lower, for an attached ADU), as potentially limited by a local agency, and with four-foot side and rear yard setbacks. State ADU Law requires that no lot coverage, floor area ratio, open space, front setback or minimum lot size will preclude the construction of a statewide exemption ADU.”

However, Government Code section 66321, subdivision (b)(4)(B) requires ADUs be permitted to be “(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.” The use of the subjective term “near transit” in the Ordinance is too vague and could be interpreted as inconsistent with State ADU Law. Therefore, the City must amend the Ordinance to clarify “near transit” to align precisely with the terms and distances in State ADU Law.

7. Section 18.23.210 B.3. – *Multifamily Height Allowance* – The Ordinance defines “Statewide Exemption ADU” as “an ADU of up to 800 square feet, 16 feet in height (18 feet near transit or when the primary dwelling has more than one story, 25 feet or the underlying zoning height limit, whichever is lower, for an attached ADU), as potentially limited by a local agency, and with four-foot side and rear yard setbacks. State ADU Law requires that no lot coverage, floor area ratio, open space, front setback or minimum lot size will preclude the construction of a statewide exemption ADU.” However, Government Code section 66321, subdivision (b)(4)(C) requires ADUs be permitted to be “(a) height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.” Therefore, the City must amend the Ordinance to allow detached ADUs up to 18 feet in height for “multifamily, multistory dwelling(s)”.
8. Section 18.23.210 B.3. – *Conversion Setbacks* – The Ordinance defines “Statewide Exemption ADU” in part as “an ADU...with four-foot side and rear yard setbacks. State ADU Law requires that no lot coverage, floor area ratio, open space, front setback or minimum lot size will preclude the construction of a statewide exemption ADU.” However, Government Code section 66323, subdivision (a)(1)(C) requires ADUs and JADUs that are within the “existing space of a single-family dwelling or accessory structure” to include side and rear setbacks “sufficient for fire and safety,” which may depart from the four-foot standard. Therefore, the City must amend the Ordinance to allow for ADUs and JADUs converted within the “existing space of a single-family dwelling or accessory structure” to have side and rear setbacks “sufficient for fire and safety.”
9. Section 18.23.210 B.3. and 18.23.210 D.2.c. – *Unit Allowance* – The Ordinance allows for “the construction of a detached new construction statewide exemption ADU to be combined on the same lot with a JADU in a single-family residential zone.” 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 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 list of permitted ADU types indicates 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. 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 cannot deny the application, nor deny a permit for a JADU under this section.

Additionally, Government Code 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."

Therefore, since State ADU Law 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 City must amend its Ordinance to allow the full allotment and combination of 66323 units and at least one unit described under Section 66314.

10. Section 18.23.210 B.4. – *Public Transit Definition* – The Ordinance defines "Public Transit" as "A bus stop or train station where public transportation runs on fixed routes." However, Government Code section 66313, subdivision (m) defines "public transit" as "a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public." Therefore, the City must add language to allow other types of public transit.
11. Section 18.23.210 D.2.b. – *Multifamily Unit Allowance* – The Ordinance allows "[u]p to two (2) detached accessory dwelling units on a lot with an existing or proposed multifamily dwelling structure."

This section is not consistent with current State ADU Law. As of January 1, 2025, the Legislature changed Government Code section 66323. Subdivision (a)(4)(A)(ii) and (iii), now allows for the following:

- o (ii) On a lot with an existing multifamily dwelling, not more than eight detached accessory dwelling units. However, the number of accessory dwelling units allowable pursuant to this clause shall not exceed the number of existing units on the lot.
- o (iii) On a lot with a proposed multifamily dwelling, not more than two detached accessory dwelling units.

Additionally, subdivision (b) now states, “A local agency shall not impose any objective development or design standard that is not authorized by this section [i.e., 66323] upon any accessory dwelling unit that meets the requirements of any of paragraphs (1) to (4), inclusive, of subdivision (a).” Therefore, the City must amend the Ordinance to account for these changes.

12. Section 18.23.210 D.2.c. – *Development Standards* – The Ordinance states, “An accessory dwelling unit may be allowed in conjunction with a junior accessory dwelling unit when the requirements of subsection F of this section, Development Standards, are met.”

The Development Standards listed in subsection F, including, but not limited to, JADU kitchen requirements, the requirement for JADU entrances to not be located along an street-facing façade, and the application of 4-foot setbacks for JADUs and front setbacks for ADUs that don’t meet the requirements of Government Code section 66323, are not consistent with Article 2 and Article 3 of Title 7, Division 1, Chapter 13, Government Code. State ADU Law allows the development standards established in Government Code sections 66314, 66323, and 66333-66339.5. Therefore, the City needs to align the development standards with State ADU Law or remove this language.

13. Section 18.23.210 D.2.c.d. – *Non-Conforming Zoning* – The Ordinance states, “Where permitted, an accessory dwelling unit may be located in any of the following places on a legally created lot:...(d) Located over or below a legally established detached garage.”

However, Government Code section 66322, subdivision (b) states, “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.” Requiring existing structures on a lot to comply with zoning standards such as parking spaces, legal permits, or a set amount of time since construction is not compliant with State ADU Law. Therefore, the City must remove the requirement that a detached garage be “legally established”.

14. Section 18.23.210 D.2.c.e. – *Multifamily Conversion* – The Ordinance states, “Where permitted, an accessory dwelling unit may be located in any of the following places on a legally created lot... (e) Detached from the existing or proposed single-unit dwelling or multifamily structure, but located on the same lot as the existing or proposed single-unit dwelling or multifamily structure.” However, Government Code section 66323(a)(3)(A) permits ADUs to be created within the portions of existing multifamily structures that are not used as livable space. Therefore, the City must amend the Ordinance to allow this type of multifamily ADU.
15. Section 18.23.210 E.1.d. – *JADU Owner Occupancy* – The Ordinance states, “Where a lot contains both an accessory dwelling unit and a junior accessory dwelling unit, either the single-unit dwelling or the junior accessory dwelling unit shall be owner-occupied.” However, Government Code section 66333, subdivision (b) prohibits owner-occupancy requirements in JADUs if the owner is another governmental agency, land trust, or housing organization. Additionally, as of January 1, 2026, the owner-occupancy requirement only applies if the JADU has shared sanitation facilities with the existing structure. These exceptions apply to all JADUs regardless of the existence of an accessory dwelling unit on the lot. Therefore, the City must amend its Ordinance to apply the owner-occupancy exceptions to all JADUs.
16. Section 18.23.210 E.2.d. – *Owner Occupancy* – The Ordinance states, “For applications received prior to January 1, 2025, there is no owner occupancy requirement for accessory dwelling units.” Although this was previously in compliance with State ADU Law, Assembly Bill 976 (Chapter 751, Statutes of 2023) removed the sunset of the prohibition on owner-occupancy requirements and instead mandated no owner-occupancy requirement for ADUs. As Government Code section 66315 states, “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, 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.” Therefore, the City must remove the owner-occupancy requirement for ADUs.
17. Section 18.23.210 F.3.d. – *JADU Objective Standards* – The Ordinance states, “A junior accessory dwelling unit shall have a separate external entrance from the primary dwelling unit. The entrance of a junior accessory dwelling unit shall not be located along any street-facing facade unless required to meet minimum ingress and egress requirements to the unit.” However, all JADUs are created pursuant to Government Code sections 66333 through 66339.5, and therefore no additional objective standards can be applied to JADUs. Therefore, the City must revise the Ordinance to remove the requirement for JADU entrances not to be located along any street-facing facade.

18. Section 18.23.210 F.3.e. – *JADU Setbacks* – The Ordinance states that “[t]he single-family unit first floor side and rear setbacks may be reduced to no less than four (4) feet to accommodate access to a ground floor junior accessory dwelling unit, or an exterior stair and landing that provide required access to the unit if it is located on the second story.” Government Code section 66333, subdivision (d) requires a permitted junior accessory dwelling unit (JADU) to be constructed within the walls of the proposed or existing single-family residence. If the proposed or existing single-family residence has less than a 4-foot setback, then the JADU only needs to not exceed the setback of the existing or proposed primary dwelling. Therefore, the City must amend its Ordinance to allow for a JADU to be developed when the primary dwelling exists within the 4-foot setback.

19. Section 18.23.210 F.3.f. – *State-Exemption JADUs* – The Ordinance states, “Junior accessory dwelling units shall satisfy applicable objective design criteria and conform to any applicable objective design guidelines of the underlying zoning district.” However, JADUs created pursuant to Government Code section 66323, subdivision (a)(1) are not subject to objective design standards beyond those provided in Government Code sections 66333 through 66339.5. Therefore, the City must amend or remove this section to allow for JADUs created under Government Code section 66323.

20. Section 18.23.210 F.4.b. – *Lot Coverage* – The Ordinance states that “[a]ccessory dwelling units shall comply with lot coverage requirements, MFA, required front setbacks of the underlying zoning district, and natural state and open space requirements when applicable, as well as other applicable development standards, except that: a maximum of eight hundred (800) square feet of ADU floor area is exempt from the MFA requirement that applies to the RS-6 zoning district; and unless classified as a Statewide Exemption ADU per subsection c below.”

However, pursuant to Government Code section 66321, subdivision (b)(3), a local agency may not establish by Ordinance “Any...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 and with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” Therefore, the City must include all exemptions listed under section 66321(b)(3) (not just the MFA requirement) to allow at least an 800 square foot ADU whether classified as a Statewide Exemption ADU or not.

21. Section 18.23.210 F.4.c. – *Local Development Standards* – The Ordinance states, “Notwithstanding the development standards set forth in subsection (F)(4)(b) of this section, if there is no alternative to constructing an accessory dwelling unit in accordance with the development standards listed in subsection F(4)(b) of this section, one (1) or more of these development standards may be waived only to the extent necessary to allow a statewide exemption ADU of up to eight hundred (800) square feet with a maximum of sixteen (16) feet in height

(except as specified in subsection (F)(4)(i) of this section), with minimum four (4) foot side and four (4) foot rear yard setbacks...” However, Government Code section 66323 requires ministerial approval of accessory dwelling units that meet the prescribed requirements and therefore, the City’s Ordinance cannot require the development of an ADU developed under Government Code section 66323 only if a unit developed under Government Code section 66314 is not possible. The City must amend the Ordinance to remove this restriction.

22. Section 18.23.210 F.4.c. – *Conversion ADU Development* – The Ordinance states, “Notwithstanding the development standards set forth in subsection (F)(4)(b) of this section, if there is no alternative to constructing an accessory dwelling unit in accordance with the development standards listed in subsection F(4)(b) of this section, one (1) or more of these development standards may be waived only to the extent necessary to allow a statewide exemption ADU of up to eight hundred (800) square feet with a maximum of sixteen (16) feet in height (except as specified in subsection (F)(4)(i) of this section), with minimum four (4) foot side and four (4) foot rear yard setbacks...”

However, Government Code section 66323, subdivision (a)(1) only requires the side and rear setbacks to be “sufficient for fire and safety.” Therefore, the City must amend the Ordinance to allow for ADUs constructed “within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure...” and specify that the setbacks for this type of ADU need only comply with requirements sufficient for fire and safety.

23. Section 18.23.210 F.4.c. – *State-Mandated ADU Allowance* – The Ordinance states, “The proposal must meet all other objective development standards. The applicant must also demonstrate that an accessory dwelling unit cannot be constructed in accordance with applicable development standards.”

However, Government Code section 66323, subdivision (a) requires a local agency to ministerially approve an application for a building permit within a residential or mixed-use zone to create specified types of ADUs and JADUs created “(n)otwithstanding Sections 66314 to 66322, inclusive...” Therefore, local agencies must ministerially approve units constructed under Government Code section 66323 regardless of the ability or inability to meet objective design standards. The City must remove these requirements from the Ordinance.

24. Section 18.23.210 F.4.e. – *Setbacks* – The Ordinance states, “Except as indicated in this subsection, an accessory dwelling unit shall be required to comply with the setback requirements of the zone in which the unit is to be located.”

However, Government Code section 66314, subdivision (d)(7) states “No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the

side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.” For this reason, conversions are not subject to any setbacks, and all other ADUs are subject to no more than four feet front and side setbacks.

Additionally, Government Code 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 an accessory dwelling unit with at least 800 square feet of interior livable space and with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” For this reason, the application of front setbacks may not preclude a unit 800 square feet or smaller. Therefore, the City must amend the Ordinance so that the application of ADU setbacks in the underlying zoning accurately reflects State ADU Law.

25. Section 18.23.210 F.4.e. – *Front Setbacks* – The Ordinance states, “Accessory dwelling units that are not classified as statewide exemption ADUs must meet the required front setback unless located within a legal, nonconforming structure.” However, pursuant to Government Code section 66314, subdivision (b)(3), a local agency may not establish by Ordinance “Any...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 City must remove the front setback requirements for ADUs up to 800 square feet, whether classified as a Statewide Exemption ADU or not.

26. Section 18.23.210 F.4.e. – *Existing Structure Conversion Setback* – The Ordinance states, “On reversed corner lots (as defined in Section 18.41.020), the rear setback for an attached ADU located on the second floor shall be a minimum of five (5) feet, unless classified as a statewide exemption ADU.”

However, Government Code section 66314, subdivision (d)(7) prohibits a local agency from requiring a setback for “an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines...” Therefore, the City must amend the Ordinance to allow conversions within existing structures and to allow a minimum of 4-foot setback.

27. Section 18.23.210 F.4.g. – *Local Development Standards* – The Ordinance states “If there is no alternative to constructing an accessory dwelling unit in accordance with the objective design standards of the underlying zoning district

or development standards listed in subsection (F)(4)(b) of this section, one (1) or more of these development standards and/or objective standards may be waived only to the extent necessary to allow a statewide exemption ADU. The applicant must also demonstrate that an accessory dwelling unit or a junior accessory dwelling unit cannot be constructed in accordance with applicable development or objective standards.”

Government Code section 66323, subdivision (a) requires a local agency to ministerially approve an application for a building permit within a residential or mixed-use zone to create specified types of ADUs and JADUs “(n)otwithstanding Sections 66314 to 66322, inclusive...” Additionally, Government Code section 66333 states “Notwithstanding Article 2 (commencing with Section 66314)...” Therefore, local agencies must ministerially approve ADUs and JADUs constructed under Government Code section 66323 regardless of the ability to meet objective design standards outlined by the zoning district or the City’s ADU ordinance. The City must amend the Ordinance to remove the requirement to demonstrate that an ADU or JADU cannot be constructed in accordance with applicable development or objective standards.

28. Section 18.23.210 F.4., Table 18.23.210 E.4. – *Height* – The Ordinance table states the maximum height for detached ADUs is 20 feet when located above a detached garage. Section 18.23.210 F.4.j. of the Ordinance states that “[a]n attached accessory dwelling unit shall not exceed twenty-five feet.” Additionally, in the “ADU over Detached Garage” section of the table, the Ordinance states the maximum height for Statewide Exemption ADUs over detached garages is “(n)one.” However, Government Code section 66321 (b)(4)(D) provides a height allowance of “25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower...”. Therefore, the City must amend the Ordinance to avoid inconsistent provisions within its sections and tables and must comply with Government Code section 66321 (b)(4)(D).
29. Section 18.23.210 F.4., Table 18.23.210 E.4. – *Lot Coverage* – The Ordinance table states lot coverage for attached and detached units not constructed under Government Code section 66323 is “(n)on-exempt from Lot Coverage requirement of underlying zoning district.” Government Code section 66321, subdivision (b)(3) states “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 an accessory dwelling unit with at least 800 square feet of interior livable space and with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” Therefore, the City must amend the Ordinance to remove lot coverage limits.
30. Section 18.23.210 F.4., Table 18.23.210 E.4. – *Conversion Maximum Floor Area* – The Ordinance table states the maximum floor area size for attached units constructed under Government Code section 66323 is “800 sq. ft.”

However, Government Code section 66323, subdivision (a)(1) states “One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply: (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 and may include 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.” Therefore, ADUs created through the conversion of structures are not subject to maximum floor area size limitations of any kind and the City must amend the Ordinance to note the exception.

31. Section 18.23.210 G.3. – *Parking Requirements* – The Ordinance waives parking requirements in instances set forth in Government Code section 66322, subdivisions (a)(1) through (a)(5). However, it omits reference to 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.” Therefore, the City must amend the Ordinance to add the additional parking exception.
32. Section 18.23.210 G.3. – *Replacement Parking Requirements* – The Ordinance states “When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an accessory dwelling unit, the parking spaces for the primary residence need not be replaced.” However, Government Code section 66314, subdivision (d)(11) states “When a garage, carport, covered parking structure, or *uncovered parking* space is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.” (Emphasis added.) The City must amend this section to add “uncovered parking” to the replacement parking exception.
33. Section 18.23.210 G.4. – *JADU Parking* – The Ordinance states, “Junior accessory dwelling units shall not be required to provide for any additional parking, except that any parking displaced by their construction, including full or partial conversion of an existing garage, shall be replaced.” However, Government Code section 66334, subdivision (a) states, “A junior accessory dwelling unit ordinance adopted pursuant to Section 66333 shall not require additional parking as a condition to grant a permit.” The Ordinance requires JADU replacement parking even though no additional parking requirement is allowed in connection with a JADU application. Therefore, the City must amend the Ordinance to remove this provision.
34. Section 18.23.210 H.5. – *Impact Fees* – The Ordinance states, “(a) No impact fees may be imposed on a junior accessory dwelling unit or accessory dwelling unit that is less than seven hundred fifty (750) square feet in size...(b) For

accessory dwelling units that have a floor area of seven hundred fifty (750) square feet or more, impact fees shall be charged proportionately in relation to the square footage of the single-unit dwelling.” However, Government Code section 66311.5, subdivision (c) states, “A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit that has 750 square feet of interior livable space or less or a junior accessory dwelling unit that has 500 square feet of interior livable space or less...” Due to recent updates to State ADU Law, the calculation to determine whether an ADU is subject to impact fees shall be based on the square footage of the interior livable space. The City must amend the Ordinance to exempt ADUs with 750 square feet of interior livable space or less from impact fees, as well as JADUs with 500 square feet of interior livable space or less.

35. Section 18.23.210 I.1. – *Pathway to Compliance* – The Ordinance states, “Prior to January 1, 2030, the owner of an accessory dwelling unit that was built before November 25, 2020, may submit an application to the Building Official requesting that correction of any violation of building standards be delayed for five (5) years.” However, Government Code section 66311.7 provides a pathway to compliance for unpermitted ADUs constructed before January 1, 2020, and does not include a sunset provision. Therefore, the City must amend the Ordinance to remove the sunset provision and apply the protections provided in section 66311.7 to unpermitted ADUs constructed before January 1, 2020.
36. Section 18.23.210 I.2. – *Building Code Violations* – The Ordinance states, “The Building Official shall grant the application if the Building Official determines that enforcement of the building standard is not necessary to protect health and safety.” However, Government Code section 66311.7, subdivision (b) requires local agencies to make the finding based on compliance “with the standards specified in section 17920.3 of the Health and Safety Code.” Therefore, the City must amend the Ordinance to address Health and Safety Code section 17920.3 specifically.
37. Section 18.40.020 A.4. – *Sanitation Design Standards* – The Ordinance states, “A junior accessory dwelling unit may include separate sanitation facilities (bathroom containing, at minimum, a sink, toilet, and shower) or may share sanitation facilities with the single-family dwelling. An efficiency kitchen is required, which must include a sink and a built-in cooking facility with appliances (e.g., microwave, toaster oven, hot plate), as well as a food preparation counter and storage cabinets.” However, Government Code section 66313, subdivision (d) defines JADUs and provides that JADUs “may include separate sanitation facilities, or may share sanitation facilities with the existing structure”. Therefore, the establishment of sanitation facility minimums is inconsistent with State ADU Law. The City must amend the Ordinance accordingly.

The City has two options in response to this letter.² The City can either 1) amend the Ordinance to comply with State ADU Law³ or 2) adopt the Ordinance without changes and include findings in its resolution accompanying the Ordinance that explain the reasons the City believes that the Ordinance complies with State ADU Law despite HCD's findings.⁴ If the City 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 City's findings and explanations, 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.⁵

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 Shasta Garcia at Shasta.Garcia@hcd.ca.gov if you have any questions or wish to discuss any of HCD's findings.

Sincerely,



Jamie Candelaria
Section Chief, ADU Policy
Housing Accountability Unit

² Gov. Code, § 66326, subd. (c)(1).

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

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

⁵ Gov. Code, § 66326, subd. (c)(1).