

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

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April 24, 2024

Libby Tyler, Community Development Director
Community Development Department
City of San Pablo
1000 Gateway Ave
San Pablo, CA 94806

Dear Libby Tyler:

RE: Review of San Pablo's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, §§ 66313 - 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 San Pablo (City) accessory dwelling unit (ADU) Ordinance No. 2023-004 (Ordinance), adopted December 18, 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 May 24, 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. 17.60.070 B.6. – *Enclosed Uses* – The Ordinance defines JADU as, “contained entirely within an existing single-family residence and/or attached garage....” 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 omission of other “enclosed uses” aside from attached garages, is inconsistent with State ADU Law. The City must amend the Ordinance accordingly.
2. 17.60.070 B.6. and F.4. – *JADUs and Internal Access* – The Ordinance states, “A JADU may include separate sanitation facilities or may share sanitation

facilities with the existing structure.” It later states, “A JADU may share sanitation facilities with the primary residence.” 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 add internal access when required.

3. 17.60.070 D. – *Denial* – The Ordinance states, “An application for a permit to establish any of the following types of ADUs in a residential or mixed-use zoning district will be approved ministerially without discretionary review or public hearing within sixty days....” However, Government Code section 66317, subdivision (a) 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...” and subdivision (b) states, “If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subdivision (a), the permitting agency shall, within the time period described in subdivision (a), 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 include a denial process consistent with State ADU Law.
4. 17.60.070 D.1.b.ii. - *Accessory Structure Expansion* – The Ordinance states, “The existing primary residence or attached accessory structure may be expanded by no more than one hundred fifty square feet beyond its physical dimensions at the time of the application to accommodate ingress and egress.” However, Government Code section 66323, subdivision (a)(1)(A) states that an ADU, “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, the 150-foot expansion is only permitted with the conversion of accessory structures. The City must amend the Ordinance to comply with State ADU Law.
5. 17.60.070 D.1.c. – *JADUs and Attachment* – The Ordinance states, “Up to one ADU and one JADU are permitted as an attachment to an existing or proposed single-family dwelling.” However, Government Code section 66333, subdivision (d) requires that JADUs be created “within the walls of the proposed or existing single-family residence.” Therefore, JADUs may not be created in new-construction additions to existing primary dwellings. The City must amend the Ordinance accordingly.
6. 17.60.070 D.1.c.v. – *Front Setbacks* – The Ordinance states, “Front yard setbacks shall be as required in the district in which the lot is located.”

However, 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 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.” The City must amend the Ordinance to allow for a front setback exception to comply with State ADU Law.

7. 17.60.070 D.1.e.v.C. – *Height* – The Ordinance requires that “The ADU does not exceed the following height limitations: 1. A height of up to the maximum allowed height in the zoning district or 25 feet, whichever is less 2. A height of up to 16 feet for a detached ADU on a lot with an existing or proposed single family dwelling unit. 3. A height of up to 18 feet for a detached ADU on a lot with an existing or proposed single family dwelling unit that is within one-half mile walking distance of a major transit stop or a high-quality transit corridor....”

However, these categories appear to conflict with one another, and it is unclear which would be applicable – for example, a detached ADU on a lot with an existing single-family dwelling may be subject to both categories 1 and 2. This would conflict with Government Code section 66323, subdivision (a)(2)(B), which provides “A height limitation as provided in subparagraph (A), (B), or (C) of paragraph (4) of subdivision (b) of Section 66321, as applicable.” Section 66321, subdivision (b)(4) allows local ordinances to apply a height limitation of no less than “(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.” Therefore, the City must clarify the Ordinance to prevent confusion and inconsistency with State ADU Law.

8. 17.60.070 D.1.e.viii., D.2.b.iv., G. – *Photovoltaic Requirements* – The Ordinance states, “Newly constructed detached ADUs for which permit requests are submitted on or after January 1, 2020, require compliance with 2019 Energy Code photovoltaic (PV) systems requirements (Section 150.1(c)(14).” It later states “Newly constructed detached ADUs and JADUs for which permit requests are submitted on or after January 1, 2020, require compliance with 2019 Energy Code photovoltaic (PV) systems requirements.” However, per the July 2022 ADU Handbook, “Newly constructed ADUs are

subject to the Energy Code requirement to provide solar panels if the unit(s) is a newly constructed, **non-manufactured**, detached ADU. Per the California Energy Commission (CEC), the panels can be installed on the ADU or on the primary dwelling unit. ADUs that are constructed **within existing space**, or as an addition to existing homes, including detached additions where an existing detached building is converted from non-residential to residential space, are not subject to the Energy Code requirement to provide solar panels.” Therefore, the photovoltaic requirements may not apply to **manufactured** new construction detached ADUs, ADUs created within an existing space, or all JADUs, as JADUs are created within an existing space of a primary dwelling and are not permitted as detached structures. The City should note the exception and must remove references to JADUs. Please refer to the CEC on this matter. For more information, see the CEC’s website at www.energy.ca.gov.

9. 17.60.070 D.2.b.ii. – *Front Setbacks and By Right Units* – The Ordinance states, “Front yard setbacks shall be as required in the district in which the lot is located.” However, local design standards pursuant to Government Code sections 66314 to 66322, inclusive, may not preclude a unit built subject Government Code section 66323. Units created pursuant to Section 17.60.070 D.2. are subject to Government Code section 66323, subdivision (a)(4). Therefore, no front setbacks may apply to these ADUs. Therefore, the City must amend the Ordinance accordingly.
10. 17.60.070 F.3. – *Parking Exceptions* – The Ordinance creates several parking exceptions that conform to Government Code section 66322, subdivision (a)(1) through (a)(5). However, the Ordinance does not include the exception provided in 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 paragraph.” Therefore, the City must amend the Ordinance to comply with State ADU Law.
11. 17.60.070 H. – *JADU Terms* – The Ordinance states “No ADU or JADU may be rented or offered for rent for a term of less than thirty days.” Government Code section 66323, subdivision (d) states, “A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.” However, this requirement applies only to ADUs and not to JADUs. Government Code section 66333 states, “Notwithstanding, Article 2 (commencing with Section 66314), a local agency may, by ordinance provide for the creation of junior accessory dwelling units...” Therefore, the City must remove the 30-day minimum rental requirement for JADUs and amend the Ordinance to comply with State JADU Law.

12. 17.60.070 I. – *Deed Restrictions* – The Ordinance requires that, “Before obtaining a permit authorizing the establishment of an ADU or JADU, the applicant shall... Enter into an agreement of restrictions with the city that refers to the deed....” However, Government Code section 66317, subdivision (c) states, “No local ordinance, policy, or regulation, other than an accessory dwelling unit ordinance consistent with this article shall be the basis for the delay or denial of a building permit or a use permit under this section,” and 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.” Section 66314 does not require a deed restriction prior to approval of an ADU application permit; therefore, this section of the Ordinance is not consistent with State ADU Law. Although the City may require a deed restriction, pursuant to other statutory authority, this requirement may not be the basis to delay or deny an ADU application and the issuance of a building permit. Therefore, the City must amend or remove this section.
13. 17.60.070 I.4. – *Separate Conveyance* – The Ordinance allows separate conveyance of an ADU from its primary dwelling if “the property was built or developed by a qualified nonprofit corporation.” Please note that current Government Code section 66342 provides local jurisdictions the option of adopting an ordinance to govern the separate sale of an ADU from its primary dwelling.
14. 17.60.070 L - *Applications* – The Ordinance states, “An application for an ADU permit must be submitted to the zoning administrator for plan check/zoning clearance before a building permit application is submitted to the city.” However, 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 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.” The City must amend the Ordinance to comply with State ADU Law.

In response to the findings in this letter, and pursuant to Government Code section 66326, subdivision (b)(2), the City must either amend the Ordinance to comply with State ADU Law or adopt the Ordinance without changes. Should the City choose to adopt the Ordinance without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinance complies with State ADU Law despite the findings made by HCD. Accordingly, the City’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)(1) if the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD may notify the City and the California Office of the Attorney General that the City is in violation of State ADU Law.

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 contact Mike Van Gorder, of our staff, at (916) 776-7541 or at mike.vangorder@hcd.ca.gov if you have any questions or would like HCD's technical assistance in these matters.

Sincerely,

A handwritten signature in black ink that reads "Jamie Candelaria". The script is cursive and fluid, with the first letter of "Jamie" being a large capital "J" and the last letter of "Candelaria" being a capital "A".

Jamie Candelaria
Senior Housing Accountability Manager

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)