

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

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March 11, 2025

Tom DuBois, City Manager
City Administration
City of Sutter Creek
18 Main Street
Sutter Creek, CA 95685

Dear Tom DuBois:

**RE: Review of Sutter Creek's Accessory Dwelling Unit (ADU) Ordinance under
State ADU Law (Gov. Code, §§ 66310 - 66342)**

Thank you for submitting the City of Sutter Creek (City) ADU Ordinance No. 373 (Ordinance), adopted October 16, 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 fails to comply with State ADU and junior accessory dwelling unit (JADU) law (collectively, "State ADU Law") 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 April 10, 2025.

The Ordinance addresses many statutory requirements; however, HCD finds that the Ordinance does not comply with State ADU Law as follows:

1. *Senate Bill (SB) 1211 (Chapter 296, § 3, Statutes of 2024)* – As of January 1, 2025, the Legislature changed Government Code section 66323. Subdivision (a)(4)(A)(ii) and (iii), now allows for the following:
 - (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.
 - (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.

2. *Assembly Bill (AB) 2533 (Chapter 834, § 1, Statutes of 2024)* - January 1, 2025, the Legislature changed Government Code section 66332, subdivisions (a) – (b) and added subdivisions (d) – (f) which change the permitting of unpermitted ADUs, add the same protections for JADUs, and set additional requirements for local agencies. The City should review these new requirements and adjust the Ordinance to comply with State ADU Law.
3. *Statutory Numbering* - The Ordinance contains several references to code sections that were repealed 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 the 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.
4. Section 18.61.020 B.1 and B.2.a. and Section 18.61.030 B – *Unit Allowance* – The Ordinance states “In no case shall more than one accessory dwelling unit and one junior accessory dwelling unit be placed on the same lot or parcel.” It later states “No more than two detached accessory dwelling units shall be allowed on a parcel zoned multifamily residential.”

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: (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 indicate that any of these ADU types can be combined on a lot zoned for single-family dwellings.

This permits a homeowner, who meets the 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 setback requirements pursuant to the subdivision, the local agency cannot deny the application, nor deny a permit for a JADU under this section. Therefore, the City must amend the Ordinance to allow for all ADU combinations described in Government Code section 66323.

5. Section 18.61.020, subdivision C. – *Development Standards* – The Ordinance states, “All requirements and regulations of the zoning district in which the lot is situated shall apply, except as set forth in subsection D of this section.” However, local development standards may not preclude any ADU or JADU created

subject to Government Code section 66323. Additionally, Government Code section 66321, subdivision (b)(3), prohibits “[a]ny 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 provide for both exceptions.

6. Section 18.61.020, subdivision D.2. – *Height* – The Ordinance states, “Accessory dwelling units are subject to the same height standards that apply to primary dwellings on the lot in the applicable zoning district.” However, Government Code section 66321, subdivision (b)(4), requires minimum heights of 16, 18, 20 or 25 feet, given stated conditions. The City must amend the Ordinance to reflect the lawful height limits provided in State ADU Law.
7. Section 18.61.020, subdivision D.3.a. – “*Substantially Compatible*” – The Ordinance states, “Accessory dwelling units shall be substantially compatible with the primary dwelling unit and the neighborhood.” However, Government Code section 66314, subdivision (b)(1), allows local jurisdictions to “[i]mpose objective standards on accessory dwelling units....” Government Code section 66313, subdivision (h), defines “Objective standards” as “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.” The Ordinance’s use of the term “substantially compatible” is inconsistent with State ADU Law. Therefore, the City must amend this section to include only objective standards.
8. Section 18.61.020, subdivision D.12 – *Parking* – The Ordinance requires “One offstreet parking space per accessory dwelling unit...” However, Government Code section 66322, subdivision (a), creates a number of conditions under which no parking standards may be required: “(1) Where the accessory dwelling unit is located within one-half of one mile walking distance of public transit. (2) Where the accessory dwelling unit is located within an architecturally and historically significant historic district. (3) Where the accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure. (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit. (5) When there is a car share vehicle located within one block of the accessory dwelling unit. (6) When a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit or the parcel satisfies any other criteria listed in this subdivision.” Therefore, the City must amend the Ordinance to include all parking exceptions provided in State ADU Law.

9. Section 18.61.020, subdivision E. – *Approval* – The Ordinance states, “Planning Director, or designee, approval shall be required for all accessory dwelling units.” It later states “The completed application form shall include, but not be limited to, data on the floor space...” However, Government Code section 66316 states, “An existing accessory dwelling unit ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this article.” Therefore, requiring the Planning Director’s approval and including the phrase “shall include, but not be limited to...” are both inconsistent with State ADU Law. The City must amend the Ordinance to provide an approval process that includes only ministerial provisions for the approval of ADUs.
10. Section 18.61.020, subdivision G. – *Existing Nonpermitted Units* – The Ordinance states, “The Planning Director may approve an accessory dwelling unit constructed without benefit of required permits; provided, that the unit conforms to the current building code, is subject to applicable current permit and impact fees, and conforms to setback, height, area, and other physical development standards otherwise applicable.” However, Government Code section 66332 provides that “[n]otwithstanding any other law, and except as otherwise provided in subdivision (b), a local agency shall not deny a permit for an unpermitted accessory dwelling unit that was constructed before January 1, 2020, due to either of the following: (1) The accessory dwelling unit or junior 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 or junior accessory dwelling unit does not comply with this article or Article 3 (commencing with Section 66333), as applicable, or any local ordinance regulating accessory dwelling units or junior accessory dwelling units.” The City must amend the Ordinance to include this exception.
11. Section 18.61.020, subdivision J. – *Sprinklers* – The Ordinance states, “The installation of fire sprinklers shall not be required in an accessory dwelling unit if they are not required for the primary dwelling unit (unless otherwise required by the Fire Chief based on State law).” However, Government Code section 66314, subdivision (d)(12), states, in relevant part: “The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.” Therefore, the City must amend the Ordinance to add the omitted allowance.

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 to 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

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 Van Gorder at mike.vangorder@hcd.ca.gov if you have any questions.

Sincerely,



Jamie Candelaria
Senior Housing Accountability Manager
Housing Policy Development Division

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).

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)