



November 15, 2024

Jamie Candelaria, Senior Housing Accountability Manager  
Department of Housing and Community Development  
Division of Housing Policy Development  
651 Bannon St, Suite 400  
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**RE: Response to HCD Review of San Mateo's Accessory Dwelling Unit (ADU) Ordinance**

Dear Jamie Candelaria,

The City has received and reviewed HCD's comments and findings in its October 18, 2024 letter on the City of San Mateo's ADU Ordinance (San Mateo Municipal Code Chapter 27.19) (ADU Ordinance), and a response to each finding is provided below. The City is committed to full compliance with State ADU laws and establishing local regulations and processes that support and encourage ADU production. On November 7, 2024, City staff met with HCD staff to review the letter and received clarification on several of the comments. The responses below have incorporated those clarifications.

1. *Statutory Numbering* - The Ordinance contains several references to code sections that were deleted by SB 477, effective March 25, 2024. These include Government Code sections 65852.2, 65852.22 and 65852.26. The contents of these sections were relocated to Government Code, Title 7, Division 1, Chapter 13 (sections 66310-66342, see Enclosure). The City must amend the Ordinance to refer to the correct code sections.

***Response:*** *The City acknowledges this finding and will update the ADU Ordinance accordingly.*

2. Section 1(c) – *Front Setbacks* – The Ordinance states, “In order to allow vehicles exiting lots to see passing pedestrians and vehicles, ADUs are not permitted within a required front yard setback.” However, local agencies may not impose: “Any requirement for a zoning clearance... based upon ...front setbacks ...that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks...” An ADU of 800 square feet with four-foot side and rear yard setbacks cannot be precluded from development for being proposed within the primary residence's front setback. Therefore, the City must amend its Ordinance to remove these design restrictions.

***Response:*** *The City acknowledges this finding and will update the ADU Ordinance accordingly, while also maintaining visibility triangles. Due to potential health and safety issues that could arise where driveways in front yards intersect with sidewalks and when a corner lot is adjacent to a street*

*intersection, the City is interested in establishing reasonable visibility triangles in front yard spaces adjacent to driveways and street intersections to maintain appropriate visibility between vehicles, bicycles, and pedestrians. Requirements for visibility triangles would be objective standards, and the City will share the proposed amendment language with HCD prior to scheduling public hearings for adoption.*

3. Section 27.04.165 (a) – *ADU Definition* – The Ordinance defines “Accessory dwelling unit” as: “an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons, is accessory to the primary single-family residential dwelling unit, and includes permanent provisions for living, sleeping, eating, cooking facilities and sanitation on the same parcel as the primary residential dwelling unit.” However, California Government Code defines an ADU as: “An attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or **multifamily dwelling** is or will be situated.” ADUs may exist on lots with both single- and multi-family dwellings. Therefore, the City must amend the Ordinance to define “ADU” to allow for such developments on lots with multi-family dwellings.

***Response:*** *The City acknowledges this finding and will update the ADU Ordinance accordingly.*

4. Section 27.04.165 (d) – *Multi-family Dwellings* – The Ordinance defines “multiple family dwelling” as: “A building or portion thereof, designed or altered for occupancy by three or more families living independently of each other.” Additionally, the Ordinance defines “two-family dwelling” as: “A building(s) designed or altered to provide attached (duplex) or detached dwelling units for occupancy by two families living independently of each other. However, for the purposes of State ADU Law, developments need only contain two attached dwelling units on the same lot to qualify as “multi-family dwellings.” Therefore, the City must amend its definition of “multiple family dwelling” to align with that of HCD.

***Response:*** *The City acknowledges this finding and will update the ADU Ordinance accordingly.*

5. Section 27.19.030 (a) – *Separate Conveyance* – The Ordinance states that, “An ADU shall not be sold separately from the primary residence.” However, Government Code section 66341 creates a narrow exception to allow separate conveyance of an ADU to a qualified buyer if the property was built or developed by a qualified nonprofit corporation, among other things. Therefore, the City must amend the Ordinance to note these exceptions.

***Response:*** *The City acknowledges this finding and will update the ADU Ordinance accordingly.*

6. Section 27.19.050 (c) – *ADUs Except from Standards* – The Ordinance states, “An attached or detached ADU of at least 800 square-feet in size and of at least 16 feet in building height with four-foot side and rear setbacks may be constructed on a lot regardless of any size limitation based on the size of the proposed or existing primary dwelling, lot coverage, floor area ratio, daylight plane,

open space, or minimum lot size that would otherwise preclude or limit its construction. However, only ADUs built pursuant to Government Code section 66323, subdivision (a)(2), are subject to a size maximum of 800 square feet. Therefore, the City must amend the Ordinance to clarify these requirements for by-right ADUs.

**Response:** *The City acknowledges this finding and will update the ADU Ordinance accordingly.*

7. Section 27.19.050 (d); (d)(2) - *Maximum Unit Size* – The Ordinance states, “Floor area size maximums for both attached and detached ADU development in excess of 800 square feet are governed by the floor area maximum established by the underlying zoning district and remaining floor area allowance available on the lot. In instances when the existing floor area allowance of a lot has been fully utilized, only the state exempted “by-right” ADU of up to 800 square feet is permitted.” While the City is within its rights to dictate ADU size based on available floor area allowance based on underlying zoning districts, the City must also allow, at minimum, a maximum size of 850 square feet for ADUs with one bedroom or fewer, and 1,000 square feet for ADUs with two or more bedrooms. Further, a square footage maximum of 800 square feet may only apply to ADUs built pursuant to Government Code section 66323, subdivision (a)(2). Therefore, the City should amend the Ordinance to clarify correct maximum unit sizes for ADUs per State ADU Law.

**Response:** *The City’s ADU Ordinance does not set a maximum size limit for ADUs, so ADUs of at least 850 sq ft or 1,000 sq ft, depending on number of bedrooms, are allowed. State exempted ADUs (including conversions of existing structures, or a new construction ADU of up to 800 sq.ft. built pursuant to Gov. Code 66323, subdivision (a)(2)) are always allowed. For ADUs over 800 sq ft, their maximum size is determined based on the Floor Area Ratio (FAR) of a site’s underlying zoning, with the first 800 sq ft of ADU floor area exempt from FAR calculations. However, the City does acknowledge this request to clarify and will update the ADU Ordinance to ensure that these maximum unit sizes are clearly communicated.*

8. Section 27.19.050 (e)(1); (e)(2) - *Maximum ADU Height* – The Ordinance allows maximum heights of 24 and 16 feet to the top plateline and 32 and 24 feet to roof peak as measured from existing grade for attached and detached ADUs, respectively. However, building height, as defined in Section 202 of the California Building Code, must be measured as the vertical distance from grade plane to the average height of the highest roof surface. Additionally, ADUs converted from accessory structures may not be subject to height requirements. Therefore, the City must amend its definition of “building height” to align with that of the CBC.

**Response:** *The height limits contained in the City’s ADU Ordinance allow for a maximum height of 24 feet for detached ADUs and 32 feet for attached ADUs, which are more permissive than the minimum height limits required per State Law. The associated plate height limits of 16 feet and 24 feet, respectively, were previously reviewed with HCD staff and determined to not conflict with State Law since the overall height limits were significantly more permissive than what State Law required. Staff has also conferred with the City’s Building Official to confirm that these limits would not conflict with the CBC height definition. Overall, the City’s strong preference is to continue to utilize the definition of height as outlined in the Zoning Ordinance, rather than the CBC definition of height. The City*

*acknowledges that existing structures converted to ADUs within an existing building envelope are not subject to height restrictions and will update the ordinance accordingly to clarify this point.*

*Also, since the Citywide practice for setting height limits includes both plate height limits and maximum height limits, the City is interested in maintaining these two height limits for ADUs for consistency and public awareness, but with limits that are more permissive than State Law. And, as part of the City's ADU Ordinance update, staff will be evaluating an increased maximum plate height limit for detached ADUs to support the ability to construct a second story ADU over a garage.*

9. Section 27.19.050 (f)(1); (f)(3)- *Setbacks and Unpermitted Structures* – The Ordinance states, “No setback shall be required for an existing legally permitted garage or accessory structure that is converted to an ADU which is constructed in the same location and to the same dimensions as the existing structure.” However, jurisdictions shall also not require setbacks for accessory structures that are converted to a portion of an existing ADU. Additionally, the permit status of an existing structure may not be a reason to preclude the development of an ADU unless the unpermitted structure presents a threat to public health and safety or is affected by the construction of the ADU. Finally, ADUs of less than 800 square feet in size may not be subject to any front setback requirements if no other lot location can accommodate the ADU. Therefore, the City must amend the Ordinance to reflect these conditions of State ADU Law.

***Response:*** *The City acknowledges this finding and will update the ADU Ordinance accordingly.*

10. Section 27.19.050 (i) - *Parking Exemptions* – The Ordinance enumerates five conditions where no additional off-street parking shall be required for an ADU. However, jurisdictions must also waive all parking standards, not just additional off- street parking standards, in these instances. Additionally, jurisdictions shall not impose parking standards when a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot. Therefore, the City must amend the Ordinance to include the sixth parking exemption.

***Response:*** *The City acknowledges this finding and will update the ADU Ordinance accordingly to add the parking exemption added under Gov Code Section 66323(a)(6).*

11. Section 27.19.050 (j) - *Architectural Standards* – The Ordinance enumerates several architectural and design standards for ADUs. However, these standards may not preclude the development of ADUs pursuant to Government Code section 66323, subdivision (a). Therefore, the City must amend the Ordinance to note these conditions.

***Response:*** *The City acknowledges this finding and will update the ADU Ordinance accordingly.*

12. Section 27.19.050 (j)(1)(A); (j)(1)(B); (j)(1)(C); (j)(2)(A); (j)(2)(B) – *Design Standards* - The Ordinance enumerates several architectural and design standards for ADUs. However, all standards on accessory dwelling units must be objective 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. Standards such as requiring “similar exterior materials” and windows that “maximize privacy” are subjective. Therefore, the City must amend the Ordinance to only include objective standards for ADU design.

***Response:*** *The City acknowledges this finding and will update the ADU Ordinance accordingly.*

13. Section 27.19.050 (k) – *Development Impact Fees* - The Ordinance states, “Development impact fees for ADUs shall be established in an amount set forth by resolution of the City Council.” Regardless of local decisions on fee amounts, local agencies, special districts, or water corporations shall not impose any impact fee upon the development of ADUs 750 square feet in size or less submittal. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit. Additionally, ADUs shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling. Therefore, the City must update the Ordinance to provide greater clarity regarding impact fee application for ADUs.

***Response:*** *The City acknowledges this finding and will update the ADU Ordinance accordingly.*

14. Section 27.19.050 (k) – *Development Impact Fees* - The Ordinance states that, “All other zoning requirements shall be complied with unless an authorized variance is approved.” Despite the jurisdiction’s ability to impose standards on ADUs through underlying zoning districts, it should be noted that all approvals for zoning requirements for ADUs must be ministerial in nature. Therefore, the City should amend the Ordinance to bolster clarity regarding the ADU approval process.

***Response:*** *The City acknowledges this finding and will update the ADU Ordinance accordingly.*

15. Section 27.19.110 (d) – *JADU Size* – The Ordinance states that, “The floor area of a JADU shall not exceed 650 square feet. However, by definition, JADUs may not exceed 500 square feet in size. Therefore, the City must amend its ordinance to allow a maximum size of 500 sq feet for JADUs.

***Response:*** *City staff consulted with HCD in 2021/2022 to seek guidance on the JADU size limit and received direction that a local jurisdiction could set a more permissive maximum size provided that it was aligned with the overall function and use intended for JADUs. Based on this guidance, the City established a maximum size for JADUs of 650 sq ft with the intention of encouraging more JADU construction and allowing for higher quality units within existing single-family dwellings. Since the ADU Ordinance was adopted in 2022, the City has issued permits for 36 JADUs, including six (6) that are larger than 500 sq ft. Because the City has permitted JADUs that exceed 500 sq ft in size and because there is local support for maintaining the current size limit, the City would like to preserve the JADU size limit of up to 650 sq ft in the ADU Ordinance.*

16. Section 27.19.110 (f)(2) – *Unit Access* – The Ordinance requires an interior entry access between a JADU and the single-family dwelling. While this is permissible in some situations, jurisdictions can only require interior entry access between a JADU and corresponding single-family dwelling when said JADU does not include a separate bathroom. Therefore, the City must amend the Ordinance to note these conditions.

**Response:** *The City acknowledges this finding, but has identified several circumstances beyond just a shared bathroom where an interior access between the JADU and main dwelling is necessary to ensure that substandard living conditions in a JADU are not created. Based on CBC requirements, a JADU is allowed to share HVAC and other utilities with the main dwelling. Thus, an interior entry is important to allow for a JADU tenant to access HVAC/thermostat controls, the electrical subpanel in the event that a breaker is blown, and/or other shared utilities if they are located in the single-family dwelling. Thus, the City is interested in continuing to require an interior entry access for JADUs when such access is needed. The City will update the ADU Ordinance to not require an interior entry when these circumstances are not present. Also, since JADU construction does not trigger fire-rated separation requirements for interior access doors, including an interior entry does not result in a significant added cost in the same way that an interior entry for an attached ADU does.*

17. Section 27.19.120 (a)(1) – *JADU Owner Occupancy* – The Ordinance requires recordation of a deed restriction and states, “The property owner must occupy either the single-family residence or the JADU.” However, JADU owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization. Therefore, the City must amend its Ordinance to note this owner- occupancy exception.

**Response:** *The City acknowledges this finding and will update the ADU Ordinance accordingly.*

We are happy to further discuss any of our responses to ensure mutual understanding about State Law requirements for the City’s ADU Ordinance, if necessary. The City plans to complete these ADU Ordinance amendments, along with other Housing Element Code amendments, in 2025. As part of the update process, we will share the draft ADU Ordinance amendments with HCD prior to scheduling public hearings.

Please contact me at (650) 522-7207 or [zdahl@cityofsanmateo.org](mailto:zdahl@cityofsanmateo.org) if you have any questions or would like to further discuss.

Sincerely,



Zachary Dahl, AICP  
Community Development Director