

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

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October 18, 2024

Zachary Dahl, Director of Community Development
Department of Community Development
City of San Mateo
330 West 20th Avenue
San Mateo, CA 94403

Dear Zachary Dahl:

RE: Review of San Mateo'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 City of San Mateo (City) accessory dwelling unit (ADU) Ordinance No. 2022-02 (Ordinance), adopted March 21, 2022, 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 junior accessory dwelling unit (JADU) 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 November 17, 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. *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.
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..."¹ 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.

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.² Therefore, the City must amend the Ordinance to define “ADU” to allow for such developments on lots with multi-family dwellings.
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.
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.
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,

¹ Gov. Code, § 66321, subd. (b)(3).

² Gov. Code, § 66313, subd. (a).

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.

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.
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.³ Therefore, the City must amend its definition of “building height” to align with that of the CBC.
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.⁴ 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.⁵ 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.⁶ Therefore, the City must amend the Ordinance to reflect these conditions of State ADU Law.

³ Gov. Code, § 66313, subd. (a)(1)(A).

⁴ Gov. Code, § 66313, subd. (d)(7).

⁵ Gov. Code, § 66313, subd. (b).

⁶ Gov. Code, § 66313, subd. (b)(3).

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.⁷ Therefore, the City must amend the Ordinance to include the sixth parking exemption.
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.
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.⁸ 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.
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.⁹ 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.¹⁰ 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.¹¹ Therefore, the City must update the Ordinance to provide greater clarity regarding impact fee application for ADUs.

⁷ Gov. Code, § 66313, subd. (a)(6).

⁸ Gov. Code, §§ 66313, subd. (b); 66313 (h).

⁹ Gov. Code, § 66313, subd. (c).

¹⁰ Ibid.

¹¹ Gov. Code, § 66324, subdivision (b).

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.¹² Therefore, the City should amend the Ordinance to bolster clarity regarding the ADU approval process.
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.¹³ Therefore, the City must amend its ordinance to allow a maximum size of 500 sq feet for JADUs.
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.¹⁴ Therefore, the City must amend the Ordinance to note these conditions.
17. Section 27.19.120 (a)(1) – *JADU Owner Occupancy* – The Ordinance requires recordation of a deed restriction 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.¹⁵ Therefore, the City must amend its Ordinance to note this owner-occupancy exception.

Please note that the City has two options in response to this letter.¹⁶ The City can either amend the Ordinance to comply with State ADU Law¹⁷ 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.¹⁸ If the City fails to take either course of action and 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.¹⁹

¹² Gov. Code, § 66317, subdivision (a).

¹³ Gov. Code, § 66313, subdivision (d).

¹⁴ Gov. Code, § 66333, subdivision (e)(2).

¹⁵ Gov. Code, § 66333, subdivision (b).

¹⁶ Gov. Code, § 66326, subd. (c)(1).

¹⁷ Gov. Code, § 66326, subd. (b)(2)(A).

¹⁸ Gov. Code, § 66326, subd. (b)(2)(B).

¹⁹ Gov. Code, § 66326, subd. (c)(1).

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 Rep Name at Nicholas.Green@hcd.ca.gov if you have any questions.

Sincerely,

Jamie Candelaria

Jamie Candelaria
Senior Housing Accountability Manager
Housing Policy Development Division

Enclosure

State ADU/JADU Law Statutory Conversion Table

New Government Code Sections	Previous Government Code Sections
<i>Article 1. General Provisions</i>	
66310	65852.150 (a)
66311	65852.150 (b)
66312	65852.150 (c)
66313	General Definition Section 65852.2 (j) 65852.22 (j)
<i>Article 2. Accessory Dwelling Unit Approvals</i>	
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.
<i>Article 3. Junior Accessory Dwelling Units</i>	
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)
<i>Article 4. Accessory Dwelling Unit Sales</i>	
66340	65852.26 (b)
66341	65852.26 (a)
66342	65852.2 (a)(10)