

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

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April 24, 2025

Benjamin Fu, Director
Community Development Department
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

Dear Benjamin Fu:

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

Thank you for submitting the City of Cupertino ADU Ordinance No. 23-2254 (Ordinance), adopted February 23, 2024, to the California Department of Housing and Community Development (HCD). The Ordinance was received on February 29, 2024. 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 May 24, 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:
 - o (ii) On a lot with an existing multifamily dwelling, not more than eight detached ADUs. However, the number of ADUs 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 ADUs.
2. *Assembly Bill (AB) 2533 (Chapter 834, Statutes of 2024)* - As of January 1, 2025, there are changes to Government Code section 66332. Subdivisions (a) and (b) were changed and subdivisions (d) – (f) were added. Changes include permitting previously unpermitted ADUs, adding the same protections for JADUs, and

setting additional requirements for local agencies. The County 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 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 County must amend the Ordinance to refer to the correct Government Code sections.
4. Sections 19.112.020 2. and 19.112.020 5. – *Compliance with Underlying Zoning* – The Ordinance states that all ADUs in Cupertino must comply with “...site development regulations and guideline [sic] specified in those zoning districts for dwelling units....” However, State ADU Law requires (1) objective development standards, and (2) exempts ADUs created per Government Code section 66323 from underlying site development regulations and zoning development and design standards. Government Code section 66314, subdivision (b), requires local ADU ordinances to impose objective standards, defined in part as only those requirements that are “...knowable by both the development applicant or proponent and the public official prior to submittal.”¹ The Ordinance does not refer to the specific regulations or guidelines that must be complied with. Only objective standards may be applied, and those objective standards authorized by section 66314 are not applicable to units described in Government Code section 66323.² Therefore, the City must amend the Ordinance to refer to the applicable objective underlying regulations, guidelines or policies for an ADU permit and must account for the exemptions for 66323 units.
5. Section 19.112.030A.2 – *Number of Units* – The Ordinance states a “maximum [of] two ADUs per duplex lot.” However, lots that contain two or more existing or proposed attached primary dwellings on the same lot, such as duplexes, are multifamily dwellings. Under State ADU Law, a lot with a proposed or existing duplex not created through the provisions of Government Code section 65852.21, may create up to (1) eight detached ADUs, and (2) at least one ADU converted from non-livable space that meets “state building standards for dwellings.”³ The Ordinance as written limits the number of ADUs that can be created on lots with existing or proposed duplexes. Therefore, the City must amend the Ordinance to provide for the appropriate number of ADUs allowable on a lot with proposed or existing multifamily dwelling structures.

¹ Gov. Code, § 66313, subd. (i).

² Gov. Code, § 66323, subd. (b).

³ Gov. Code, § 66323, subds. (a)(3)(A) and (a)(4)(A).

6. Section 19.112.030 B. 4. – *Maximum Size, Detached Multifamily ADUs* – The Ordinance indicates the maximum size of a detached ADU on a lot with a proposed or existing multifamily dwelling is limited to “1,200 s.f.”. However, Government Code section 66323, subdivision (b) states, “A local agency shall not impose any objective development or design standard that is not authorized by this section upon any accessory dwelling unit that meets the requirements of any of paragraphs (1) to (4), inclusive, of subdivision (a).” Therefore, the maximum sizes stated in this section may not apply to any unit created subject to Government Code section 66323, subdivision (a)(4). The City must amend the ordinance to remove the restriction on maximum size for detached ADUs on lots with existing or proposed multifamily dwellings.
7. Section 19.112.040 F.1. – *Parking* – The Ordinance does not provide for all of the exemptions to parking requirements pursuant to Government Code section 66322, subdivisions (a)(1) through (a)(6): **“(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.”** (Emphasis added.) Therefore, the City must amend the Ordinance to add the exemption in Government Code section 66323, subdivision (6).
8. Section 19.112.040 I. – *Structure Design* – The Ordinance states that structure design “Should be compatible with the architectural style and materials of the principal structure.” However, Government Code section 66314, subdivision (b)(1), allows local jurisdictions to only “[i]mpose **objective** standards on accessory dwelling units...” (Emphasis added.) 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 requirement that an ADU “should be compatible...” is subjective and therefore may not be imposed. The City must amend this section to include only objective standards.

The City has two options in response to this letter.⁴ The City can either amend the Ordinance to comply with State ADU Law⁵ 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.⁶ If the City fails to take either course of action and bring the Ordinance into compliance

⁴ Gov. Code, § 66326, subd. (c)(1).

⁵ Gov. Code, § 66326, subd. (b)(2)(A).

⁶ Gov. Code, § 66326, subd. (b)(2)(B).

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.⁷

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 Michael McLaughlin at Michael.McLaughlin@hcd.ca.gov if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Jamie Candelaria".

Jamie Candelaria
Senior Housing Accountability Manager
Housing Policy Development Division

⁷ 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)