City of LOMPOC

August 27, 2024

Jamie Candelaria
Senior Housing Accountability Unit Manager
Housing and Community Development
651 Bannon Street, Suite 400
Sacramento, CA 95811

RE: **City of Lompoc's Response to HCD's Review of Lompoc's ADU Ordinance under State ADU Law**

Ms. Candelaria,

The City of Lompoc is in receipt of a letter from Jamie Candelaria, dated July 31, 2024, providing comments on the City's ADU ordinance, including a determination that the City's ordinance does not comply with Government Code Section(s) 66310-66342 following the recent urgency legislation from March 25, 2024 enacting Senate Bill 477.

As an initial comment, the City notes, and presumes that HCD is aware, that many of the conflicts between the City's ADU ordinance and state law are a result of changes to state law that occurred after the City adopted the ordinance and have remained in place because for the last several years the state has made substantial changes to ADU laws every year, and annual updates to City codes are not always feasible. SB 477 being yet another example.

Response to HCD Comments

With two exceptions, the City agrees to make the changes requested by HCD for Item Nos. 1-8 and 10. With respect to the other two issues, the City requests an opportunity for further discussion with HCD. The two issues are as follows:

A. #9. 17.404.020(G(3)—Parking.

The City respectfully disagrees with HCD's reading of Government Code Section 66334 based on the grounds that (a) there is no caselaw supporting HCD's position that the City's requirement to "replace" the primary residence parking lost is to be considered as requiring "additional parking" (b) nor is the definition of "additional parking" further defined by the statutory language and (c) HCD's position contradicts its Guidelines for Garage Conversion ADU's.

First, there is no caselaw addressing this issue, so there is no authoritative interpretation of Gov. Code Section 66334 subsection (a).

Second, the statutory language does not support HCD's position interpretation that the City 'shall not require additional parking as a condition to grant a permit" or that "any parking requirements imposed in conjunction with the construction of a JADU is not compliant with state law."

The statute states, "shall not require *additional* parking." Meaning, the City would need to require the applicant to build additional parking for the JADU, and not the primary residence.

Based on the July 31, 2024 letter, HCD takes the position that a primary residence's required parking is forfeit should an applicant submit a JADU application. This is not an inconsequential issue. Not only may an applicant forgo planning for parking for its JADU, but now also forces even more vehicles unto the street which will have significant adverse outcomes for neighborhood parking congestion and subsequently renders the primary residence non-compliant with the City's zoning code.

Third, HCD's position contradicts its guidance under the "Guidelines for Garage Conversion ADU's" published on 03/2021 where HCD is careful to advise that No *replacement parking* is required for an ADU, but that a "local government may require *replacement parking* for a JADU Garage Conversion."

Currently, the City does not require parking for JADU's (or ADU's) but in instances where a primary single family dwelling requires parking (i.e. covered parking) as part of the original construction of the primary dwelling and the required parking is converted to a JADU, the parking must be replaced for the primary dwelling. Rather than require "additional parking" as a condition, the City is requesting the replacement of the required parking for the primary dwelling. This is not a parking requirement for the JADU.

As such the City does not understand why HCD believes this to be an error and requests further clarification that "replacement" parking can be enforced as long as the parking is a requirement for the primary dwelling (and clearly distinguished in our Zoning code), and not the JADU.

B. #11 State Exemption ADU's and JADU's

The City respectfully requests further clarification as to HCD's position regarding this specific item because as stated in the July 31, 2024 letter, HCD's position can run afoul of SB 9 by requiring more than seven-units on a single lot.

Currently, the City defines "multi-family" as a "means of, from, or pertaining to residential premises with five or more dwelling units. As such, by applying "this subdivision [] to ADU's created pursuant to Government Code section 66323, subdivisions (a)(3) and (a)(4), on lots with proposed existing multifamily dwellings could result in over seven units per single lot.

HCD's SB 9 fact sheet states, "in no case does SB 9 require a local agency to allow *more than* four-units on a single lot, in any combination of primary units, ADU's and Junior ADU's." The City is concerned the City's "multifamily" definition differs from HCD's. As such, the City requests further clarification on this item.

If you have any questions about this clarification or would like to discuss comment #9 in a phone meeting (or virtual meeting), you may contact me by email at: b_halvorson@ci.lompoc.ca.us or directly by telephone at (805) 875-8228.

Thank you,

B. H

Brian Halvorson, AICP
Planning Manager

Attachment
HCD Findings Letter dated July 31, 2024

c: Christie Alarcon, Community Development Director
Joshua Imeri-Garcia, Assistant City Attorney
Project File

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY GAVIN NEWSOM, *Governor*

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
651 Bannon Street, Suite 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

July 31, 2024

Brian Halvorson, Planning Manager
Planning Division
City of Lompoc
100 Civic Center Plaza
Lompoc, CA 93436

Dear Brian Halvorson:

RE: Review of Lompoc'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 Lompoc (City) ADU Ordinance No. 1702 (Ordinance), adopted 03/07/2023, 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 August 30, 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. 17.404.020 (E)(3)(a) – *Amount Permitted, Single-Family* – The Ordinance states, "If the parcel has one or more existing or proposed single-family dwellings, then a total of one ADU is allowed on the parcel." However, Government Code section 66323, subdivision (a) allows:
"(1) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling…" and "(2) One detached, new construction, accessory dwelling unit…", indicating a potential for a lot with a single-family dwelling to create one ADU converted from existing space, one detached, new construction ADU under 800 square feet, and one JADU. Restricting ADUs on single-family lots to only one ADU would preclude a potential combination of units as allowed under Government Code section 66323, subdivisions (a)(1) and (a)(2).

Therefore, the City must amend this section to allow for all potential units provided for under Government Code section 66323, subdivisions (a)(1) and (a)(2).

2. 17.404.020 (E)(3)(b) – *Amount Permitted, Multifamily* – The Ordinance states, "(i) If the parcel has one or more proposed or existing multifamily dwellings, then up to two detached ADUs are allowed on the parcel, provided that the ADUs shall be detached from each other and from all primary dwellings. (ii) If the parcel has one or more existing multifamily dwellings, then one of the following options is allowed on the parcel: (a) One ADU attached to an existing multifamily dwelling; or (b) One ADU created through the conversion of space within an existing multifamily dwelling for every four existing multifamily units, provided that at least one ADU is allowed regardless of the number of units. For example, one ADU is allowed in an existing multifamily dwelling structure with seven or fewer units; two ADUs are allowed in an existing multifamily dwelling structure with eight to 11 units; and three ADUs are allowed in an existing multifamily dwelling structure with 12 units; etc. (iii) Subsections E.3.b.i and E.3.b.ii may not be combined."

3. However, under Government Code section 66323, subdivisions (a)(3)(B) and (a)(4)(A), a lot with a multifamily dwelling may create "...at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units..." as well as "two accessory dwelling units that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling..." in any combination.

4. Additionally, the requirement for detached ADUs under subsection (i) to be detached from one another is exceeds the statutory requirements under Government Code section 66323, subdivision (a)(4), which states "...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... Not more than two accessory dwelling units that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling..." Restricting ADUs on multifamily lots to only one subsection would preclude a potential combination of units as allowed under Government Code section 66323, subdivision (a), and requiring newly-created ADUs to be detached from one another exceeds the statutory requirements and could preclude detached ADUs that the statute would permit. Therefore, the City must amend this section to allow for all potential units provided for under Government Code section 66323, subdivision (a).

5. 17.404.020 (E)(6) – *Separate Entrances* – The Ordinance states, "ADUs located within or attached to a primary dwelling shall include an entrance that is separate from the main entrance to the primary dwelling. The separate entrance shall be located on the side or in the rear of the primary dwelling." However, Government Code 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, including an owner-occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer. The City may not require that the separate entrance be located on the rear or side of the primary unit or structure. The City must remove this restriction or amend the Ordinance to say that the "separate entrance should be located in the rear or side of the primary unit or structure whenever feasible."

6. 17.404.020 (F)(1)(a) – *JADUs* – The Ordinance states, "Properties with more than one existing or proposed single-family dwelling…with any number of existing or proposed multifamily dwellings are not permitted to have a JADU." However, Government Code section 66333, subdivision (a) states "a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones… The ordinance… shall do all of the following: (a) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot." For the purposes of State ADU and JADU Law, a duplex is considered to be a multifamily dwelling unit. Therefore, the City must amend the Ordinance to comply with State ADU Law.

7. 17.404.020 (F)(1)(b) – *ADUs and JADUs* – The Ordinance states, "If a second primary unit is constructed on a property with an existing JADU, then, notwithstanding any other provision of this Section, no new ADUs shall be permitted on the property unless the JADU is demolished." However, 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…(1) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling…(2) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks."

   The creation of a JADU may not preclude the creation of additional ADUs on any residential or mixed-use zone which has at least one existing or proposed single-family dwelling present on the lot. Therefore, the City must remove this restriction entirely.

8. 17.404.020 (F)(5) –*JADU Entrances* – The Ordinance States, "The separate entrance shall be located on the side or in the rear of the primary dwelling." However, Government Code section 66333, subdivision (e)(1) states, "The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following… Require a permitted junior

accessory dwelling unit to include a separate entrance from the main entrance to the proposed or existing single-family residence." The requirement for a separate entrance does not include the requirement for that entrance to be in a specific portion of the structure. Therefore, the City must remove this requirement entirely.

9. 17.404.020 (G)(3) – *Parking* – The Ordinance states, "Off-street parking spaces shall be replaced when a garage, carport, or covered parking structure is demolished in conjunction with the construction of a JADU or is converted to a JADU." However, Government Code section 66334, subdivision (a) states, "A junior accessory dwelling unit ordinance adopted pursuant to Section 66333 shall not require additional parking as a condition to grant a permit." Any parking requirements imposed in conjunction with the construction of a JADU is not compliant with state law. Therefore, the City must remove this restriction entirely.

10. 17.404.020 (H) – *Design Standards* – The Ordinance states, "Any new construction required to create an ADU or JADU shall comply with the City's architectural and design guidelines." However, Government Code section 66314, subdivision (b)(1) states that a local agency may, by ordinance, "Impose objective standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size…" Objective standards are defined in Government Code section 66313, subdivision (h), 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." Only objective standards may be applied to ADUs, and no additional design standards may be applied to JADUs. It is unclear whether the design standards mentioned are strictly objective in nature. Requiring ADUs and JADUs to meet subjective or non-ministerial standards would not be in compliance with State ADU Law. Therefore, the City must amend this section so that that only objective design standards will apply to ADUs, and no additional design standards will apply to JADUs.

11. 17.404.020 (M) – *State Exemption ADUs and JADUs* – The Ordinance states, "Notwithstanding any other provision in this section except for subsections (F)(1)(b) and (I), the City shall ministerially approve an application for a JADU and/or one or more ADUs if the proposed unit or units meets the requirements of subsection (e)(1)(A), (e)(1)(B), (e)(1)(C), or (e)(1)(D) of Government Code Section 65852.2, provided that only one such subsection may be used per parcel." However, 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 an enumeration of by right ADU types permitted indicate that any of these ADU types can be combined on a lot zoned for single family dwellings. This permits a homeowner, who meets 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 setbacks pursuant to the subdivision, the local agency cannot deny the application, nor deny a permit for a JADU under this section. This subdivision also applies to ADUs created pursuant to Government Code section 66323, subdivisions (a)(3) and (a)(4), on lots with proposed or existing multifamily dwellings. Only allowing one subsection to be used per parcel would prevent property owners from creating ADUs they are entitled to under Government Code section 66323, subdivision (a). Therefore, the City must amend this section to allow for all potential units as allowed under Government Code section 66323, subdivision (a).

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 feel free to contact Tyler Galli, of our staff, at (916) 776-7613 or at Tyler.Galli@hcd.ca.gov.

Sincerely,

Jamie Candelaria

Jamie Candelaria
Senior Housing Accountability Unit Manager
Housing Policy Development Division