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Frequently Asked Questions Regarding Accessory Dwelling Unit Laws

Q: What is an accessory dwelling unit (ADU)?

A: An accessory dwelling unit (ADU) is a dwelling unit that provides complete independent living facilities (living, sleeping, eating, cooking and sanitation facilities) located on a lot with a proposed or existing primary residence. It can be attached to or detached from the primary residence.

A “junior” ADU may share sanitation facilities with the primary dwelling and is only required to have an efficiency kitchen. It must be attached to the primary residence and cannot exceed 500 square feet.

Q: How many ADUs can be on one lot?

A: For single-family residential lots, up to three* ADUs can be located on one lot with an existing or proposed single-family home. This includes one Junior ADU, one detached, new construction ADU, and one ADU that is within the proposed space of a new single-family home or a conversion of space within an existing single-family home or accessory structure. To qualify for three ADUs on one lot, the ADUs must meet the requirements of Government Code Section 66323.

For multi-family residential lots, up to two new detached ADUs can be constructed, and at least one (but no more than the number that is 25% of the number of existing units) attached ADU can be created from the conversion of existing non-habitable space. These units must also meet the requirements of Section 66323.

The ADUs that are permitted by Section 66323 are often referred to as “statewide exemption ADUs.” This section requires a local agency to approve an ADU that meets the requirements of that section regardless of any local ordinance or other provisions of the ADU Laws. The City is not required to permit this many ADUs on a lot if they do not meet the criteria for statewide exemption in Section 66323.

**There is some debate over whether Section 66323 allows up to two or three statewide exemption ADUs, as the statutory language is ambiguous. However, HCD takes the position that the law allows up to*

three statewide exemption ADUs and HCD reviews all local ADU ordinances and will refer any ordinance it finds to be in non-compliance with the law to the Attorney General.

Q: What development standards can the City impose on an ADU?

A: For a statewide exemption ADU, the City can only impose the development standards listed in Section 66323.

- Detached, new construction ADU at a single-family property: 800 square feet floor area limit, 4 foot rear and side yard setbacks, and a height limit of 16 feet (18 feet if within ½ mile of a major transit stop or high-quality transit corridor).
- Attached ADU or conversion of existing accessory structure at a single-family property: side and rear yard setbacks sufficient for fire and safety, independent exterior access, no expansion of square footage of existing structures except to accommodate ingress/egress and not more than 150 square feet.

For other ADUs, the ADU Laws allow a local ordinance to establish objective development standards that are consistent with the restrictions in those laws, including, but not limited to, parking, height, setback, landscape, architectural review, and maximum size of a unit. Section 66314 lists the maximum development standards that can be applied to ADUs by local ordinance. Additionally, Section 66321 places limits on minimum and maximum unit size requirements and height limitations, and Section 66322 places limits on parking requirements. Taken together, an agency's development standards cannot be so restrictive that they would preclude the construction of an ADU that is at least 800 square feet with four foot rear and side yard setbacks. Minimum lot size standards are prohibited.

The development standards applicable to Junior ADUs can be found in Section 66333-66339.

The ADU Laws allow a local agency to be less restrictive than what is provided for in State law if it so desires.

Q: How big can an ADU that is not a statewide exemption ADU be?

A: Unless an agency decides to be less restrictive than State law, the default maximum size for a detached ADU that is not a conversion of an existing accessory structure is 1200 square feet (Section 66314(d)(5)). For attached ADUs and conversions of existing accessory structures, there is no maximum square footage in the

State law, but it cannot exceed 50% of the square footage of an existing primary residence (Section 66314(d)(4)). However, State law allows a local ordinance to establish a maximum square footage for both detached and attached ADUs of 850 square feet or 1000 square feet if there is more than one bedroom in the ADU. A Junior ADU cannot exceed 500 square feet.

Q: Is the property owner required to live in one of the units?

A: State law does not require owner-occupancy and prohibits a local ordinance from requiring owner-occupancy unless there is a Junior ADU on the property. The owner of the property may live in either the Junior ADU or the primary unit. If the owner of the property is a governmental agency, land trust, or housing organization then owner-occupancy cannot be required.

Q: What permits can the City require for an ADU?

A: For a statewide exemption ADU the City can only require a building permit. For other ADUs, a local agency can establish a permit requirement for ADUs beyond a building permit if it so desires, however, that permit must be ministerial. The ADU Laws prohibit discretionary review and hearings for ADUs.

Q: Are there deadlines for the approval or denial of a permit for an ADU?

A: Yes. If there is an existing residence on the property, the agency has 60 days from the date a complete application is received to approve or deny the application. If the ADU application is in conjunction with the construction of a new primary residence, then the agency can approve or deny the application concurrently with the application for the primary residence. If the agency denies the application, it must be accompanied by a full set of comments with a list of defective or deficient items and a description of how they can be remedied.

Q: What fees can we charge an applicant for an ADU?

A: The City can establish a processing fee to recover the costs of processing an ADU application. Development impact fees can be charged to the applicant for an ADU that is at least 750 square feet in size, but the City cannot charge the full impact fees it would charge to

a primary residence. Any impact fees charged to an ADU that is 750 square feet or greater in size must be “proportionately in relation to the square footage of the primary dwelling unit.”

Q: They want to convert a garage to an ADU. Can we require replacement parking?

A: No. “When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency **shall not require** that those off-street parking spaces be replaced.”

Q: Does an ADU need fire sprinklers?

A: Only if the primary unit also requires fire sprinklers. The construction of a new ADU does not trigger the need to install fire sprinklers in an existing primary residence. In practice, this means that an ADU will need fire sprinklers only if it is being built concurrently with a primary residence that is required to have fire sprinklers.

Q: Do we have to allow an ADU if the primary residence is a non-conforming use?

A: No. ADUs are only required to be allowed in zones where single or multifamily residential uses are permitted.

Q: Can we require existing, nonconforming conditions on the property to be fixed?

A: Generally, no, unless the conditions are a threat to public health and safety and are affected by the construction of the ADU. “The local agency **shall not deny an application for a permit** to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit.”

For more information on ADUs or to speak to a knowledgeable California ADU attorney, **reach out** to Burke, Williams & Sorensen, LLP.