

City of Temecula ADU Governance Flyover

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The following comments reflect conflicts between current State ADU Laws and the current ADU regulations found in Ordinance 2025 -12. Where local ADU regulations conflict with State ADU Law without basis in any superseding laws, the City must adopt an ADU Ordinance to bring the local regulations into compliance with State ADU Law. This flyover review represents a non-exhaustive list of conflicts to identify major inconsistencies particularly due to recent State ADU Law updates.

Please Note: As of January 1, 2025, with the chaptering of Senate Bill (SB) 1211 (Chapter 296, Statutes of 2024), under Government Code section 66323, subdivision (a)(4)(A)(ii), there is an allowance for "...up to 8 detached ADUs to be created on a lot with an existing multifamily dwelling, provided that the number of ADUs does not exceed the number of existing units on the lot, and up to 2 detached ADUs on a lot with a proposed multifamily dwelling."

- 1) *Statutory Numbering* – The Ordinance reflects outdated statute numbering (65852.2, etc) and must be updated to reflect current statute (66310 – 66324).
- 2) Section 17.23.030 D. (1),(2) – *Single-Family Unit Allowance* – The Ordinance allows "only one ADU or JADU within an existing residence", and states "Notwithstanding section D.1.a, one ADU or JADU within an existing residence is allowed on a lot that also contains one detached ADU." 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..." before introducing the different formats of "state exempt" units. The phrase "any of the following" indicates that these formats must be approved in combination with one another. The City must amend the Ordinance to allow all state-mandated combinations.
- 3) Section 17.23.030 D. (3) (4) – *Multi-family Unit Allowance*– The Ordinance states "One ADU within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings. If requested, multiple ADUs shall be allowed, up to the number of ADUs that equals twenty-five percent of the existing multifamily dwelling units in the structure. Not more than two detached ADUs located on a lot that has an existing multifamily dwelling, subject to a height limit of sixteen feet and four-foot rear yard and side setbacks." Please note that SB1211 (effective January 1, 2025) has added Government Code section 66323, subdivision (a)(4)(ii) to state "On a lot with an existing multifamily dwelling, not more than eight detached accessory dwelling units. However, the number of accessory dwelling units

allowable pursuant to this clause shall not exceed the number of existing units on the lot.” The City must amend the Ordinance to reflect recent updates to State ADU Law.

- 4) Section 17.23.030 E.2 – *Attached Garage JADU* – The Ordinance states “A JADU must be contained entirely within the walls of the existing or proposed single-family dwelling.” However, Government Code section 66333, subdivision (d) allows for a JADU to be built within a single-family residence, including but not limited to an attached garage. The City, must amend the Ordinance to include an attached garage for a JADU conversion.
- 5) Section 17.23.040 F – *Review Process* – The Ordinance states “ADU permit applications subject to ministerial approval shall be processed within the timelines established by California Government Code Section 65852.2. The city shall approve the ADU permit within sixty days of receiving the application, or as the deadline required by Government Code Section 65852.2 may be amended from time to time.” However, Government Code section, 66317, subdivision (a) states, “The permitting agency shall either *approve* or *deny* the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot.” The City must amend the Ordinance to include “approve or deny”, not just “approve” the application within the 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multi-family dwelling on the lot. The City is required a denial with a full set of comments on how to remedy the application. Therefore, the City must amend this section to reflect State ADU Law.

- 6) Section 17.23.050 B.1 – *Development Standards* – The Ordinance states “If there is an existing primary dwelling, an attached ADU shall not exceed fifty percent of the gross floor area for the primary dwelling. An attached ADU that is proposed with a new primary dwelling shall not exceed one thousand two hundred square feet in floor area. A detached ADU shall not exceed one thousand two hundred square feet in floor area.” However, under the provisions of Government Code section 66314 (d)(4) and, 66321 subdivision (b)(2), local agencies can only limit the size for attached new-construction ADUs to fifty percent of the Primary Dwelling if it does not prevent an ADU of 850 or 1000 square feet for an ADU that provides more than one bedroom. In addition, under the standards set-forth in Government Code section, (a)(1), there is no size limit for conversion ADUs, except if it’s a single-family conversion ADU with an addition, that is limited to 150 square feet to accommodate ingress and egress. The City must amend the Ordinance to allow these standards of the State ADU Law.
- 7) Section 17.23.050 B.5 – *Lot Coverage* – The Ordinance states “An ADU shall conform to all lot coverage requirements applicable to the zoning district in which the property is located, except where the application of the lot coverage regulations would not permit construction of an eight hundred square foot ADU that is sixteen feet in height with four-foot side and rear yard setbacks.” However, local development standards cannot preclude a unit created subject to Government Code section 66323. Additionally, Government Code section 66321, subdivision (b)(3) prohibits “Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” There is no condition attached to this exception. If the applicant can demonstrate that the front setbacks would preclude a unit subject to local development standards, the application of the front setback would be inconsistent with State ADU Law. Therefore, the City must amend the Ordinance to comply with State ADU Law.
- 8) Section 17.23.050 C.1 – *Subjective Standards* – The Ordinance states, “The ADU shall have the same design, architecture, colors and materials of the primary dwelling, and shall comply with any objective design standards adopted by the city that are applicable to the zoning district or specific plan area where the ADU is located.” These terms and conditions are subjective and require discretion and independent judgement. Government Code section 66314, subdivision (b) requires that local development standards be objective. “Objective standards” means 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. In addition, 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 apply only objective standards to ADUs and JADUs.

- 9) Section 17.23.050 C.2 – *Fire Sprinklers* – The Ordinance states, “Fire Sprinklers. ADUs are required to provide fire sprinklers if they are required for the primary dwelling.” However, Government Code section 66314, subdivision (d)(12) and section 66323, subdivision (d), expand on this allowance to state, “The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.” Therefore, the City must amend the Ordinance to include the complete fire sprinkler exemption.
- 10) Section 17.23.050 E.2 – *Uncovered Parking* – The Ordinance states, “When the ADU is created by converting or demolishing a garage, carport or covered parking structure, replacement of parking space(s) eliminated by the construction of the ADU shall not be required as long as the ADU remains in use as a legal ADU.” However, Government Code, section 66314, subdivision (d)(11), states that “A local agency may not require off-street parking spaces to be replaced when a garage, carport, covered parking structure, or uncovered parking space is demolished in conjunction with the construction of an ADU or converted to an ADU.” The city must amend the Ordinance to include non-replacement of uncovered parking when uncovered parking is used to construct or is converted to an ADU.
- 11) Section 13 – *Severability* – The Ordinance states, “If any section or provision of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, the remaining sections and/or provisions of this Ordinance shall remain valid. The City Council hereby declares that it would have adopted this Ordinance, and each section or provision thereof, regardless of the fact that any one or more section(s) or provision(s) may be declared invalid or unconstitutional or contravened via legislation.” However, Government Code section, 66316 states “If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this article, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this article for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this article.” The Severability clause implies that some parts of the Ordinance will be valid even if other parts are not valid. The City must remove the Severability clause and apply the standards under Government Code section, 66316 when the existing accessory dwelling unit ordinance that fails to meet the requirements of this article.

