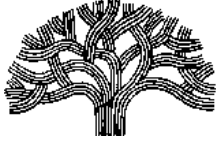


# ATTACHMENT C



## CITY OF OAKLAND

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January 8, 2026

### **Via E-mail (Return Receipt Requested)**

Jamie Candelaria  
Section Chief, ADU Policy  
Housing Accountability Unit  
State of California Business, Consumer Services and Housing Agency  
Department of Housing and Community Development  
Division of Housing Policy and Development  
651 Bannon Street, Suite 400  
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### **RE: City Response Letter Following HCD's Review of Oakland's Accessory Dwelling Unit (ADU) Ordinance and Written Findings Letter Pursuant to State ADU Law (Gov. Code, §§ 66310-66342)**

Dear Jamie Candelaria:

Thank you for your review and the December 10, 2025 written findings letter (HCD Findings Letter) to City of Oakland Planning and Building Deputy Director Ed Manasse following the City of Oakland (City) submittal of its Accessory Dwelling Unit (ADU) Ordinance No. 13856 (Ordinance), which the City adopted on July 15, 2025.

Please consider this letter (Response Letter) the City's timely reply to the HCD Findings Letter, which Government Code section 66326(b)(1) requires within thirty (30) days of receipt of the HCD Findings Letter, or by **January 9, 2026**. This Response Letter addresses each of the sequential

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Findings (Findings 1-5) you provided in your December 10, 2025 Findings Letter. We would also request that HCD and the City of Oakland Planning and Building Department meet and confer to review these responses with you and address any outstanding concerns. The following constitutes our responses organized by: I) procedural clarification on findings the City had already addressed; II) procedural clarification on the City Council legislative process to address any pending items; and III) the City's responses to HCD's findings.

**I. The City Council's 2024 Findings In Ordinance No. 13800 C.M.S. Justifying the City's Regulation of ADUs in the S-9 Combining Zone Complies With Government Code Section 66326(b)(2)(B) Requirement For HCD Finding #2**

The HCD Findings Letter states that the City has the following two options in response<sup>1</sup>; the City can either: (1) amend the Ordinance to comply with State law<sup>2</sup> or (2) 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 law.<sup>3</sup> HCD further states that 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.<sup>4</sup>

The City hereby clarifies from the outset that, with respect to Finding #2, entitled "Fire Hazard Restrictions", the City did adopt findings as part of its 2024 ADU legislation (Ordinance No. 13900 C.M.S.) that explained the reasons why the City believes the Ordinance complies with State ADU law concerning the City's regulation of ADUs in the S-9 Combining Zone and implementing Fire Hazard restrictions. The findings begin on page 8 of the 2024 ADU Legislation.

Please refer to the following Oakland Legistar link for Ordinance No. 13800 C.M.S. at:

<https://oakland.legistar.com/View.ashx?M=F&ID=13057977&GUID=4E7D2C62-487D-4DAB-87FC-2D7CF6DE4760>

<sup>1</sup> Gov. Code, § 66326, subd. (c)(1).

<sup>2</sup> Gov. Code, § 66326, subd. (b)(2)(A).

<sup>3</sup> Gov. Code, § 66326, subd. (b)(2)(B).

<sup>4</sup> Gov. Code, § 66325, subd. (c)(1).

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For more context on the 2024 ADU Legislation and findings, see the accompanying Agenda Report at:

<https://oakland.legistar.com/View.ashx?M=F&ID=12962029&GUID=058DEC76-7906-44CD-BB4C-35EC3FF81CEE>.

In addition, in the City's previous August 4, 2023 Response Letter to HCD (responding to HCD's July 5, 2023 Findings Letter), the City provided HCD its findings as to why the City believed its regulation of ADUs in the S-9 Combining Zone was consistent with State law.<sup>5</sup> Those findings remain unchanged and were carried over to the City's 2024 ADU Ordinance. The City's latest ADU Ordinance, adopted on July 15, 2025, makes no substantive changes to the City's ADU regulations in the S-9 Combining Zone, which remain in compliance and supported by the City's 2024 ADU Legislation findings.

### **II. City Council Authority and Legislative Process for Amending the City's ADU Ordinance or Adopting Written Findings**

Since the City received the December 10, 2025 HCD Findings Letter immediately prior to the City Council adjourning for its winter recess and ensuing holidays, the City Staff and City Attorney's Office have not yet had an opportunity to confer with members of the City Council regarding this Response Letter. Therefore, this Response Letter may be subsequently amended following our meeting(s) with members of the Council, since it is solely within the Council's purview to determine whether to amend the Planning Code or adopt written findings pursuant to Government Code section 66326(b)(2)(B). Therefore, this Response Letter is not intended to, nor can it usurp Council's authority to determine whether to make certain Planning Code amendments. Neither can this Response Letter pre-commit the Council to a certain course of legislative action without Council authorization. However, City staff can work with HCD and offer recommendations to the Council for adoption.

Prior to Council approval, the legislative process will require that City Staff bring any Planning Code amendments to the Planning Commission and Community and Economic Development Committee (CED) of the Council in their roles as advisory/recommending bodies to the Council. Once CED makes its recommendation, the legislation is brought before Council for two separate Council hearings for final adoption of an Ordinance for a Planning Code amendment as required for enactment under the City Charter.

<sup>5</sup> Please see **Attachment A** to this letter for the City's August Please see **Attachment A**, for the City's August 4, 2023 Response Letter with Attachments A-G. Specifically, the City's response to HCD's finding regarding ADU restrictions in the City's Fire Hazard areas is located on pages 2-8 with supporting Attachments A-G.

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As previously noted, the City is requesting the opportunity to meet and confer with HCD staff to discuss the City's responses at your earliest convenience. We will also keep you updated on the City's legislative schedule as we work with you through HCD's comments. As we still need to confer with Planning Commissioners and Councilmembers, we anticipate being able to complete the legislative process by Spring, 2026.

Again, City staff would like to thank you for confirming that the City's Ordinance addresses many statutory requirements, even as HCD believes the Ordinance does not comply with State ADU Law in other respects. As to those aspects of the Ordinance where HCD believes the City is not in compliance, the City looks forward to continued collaboration with HCD to reach a result that addresses the housing crisis, fairly interprets State law, and protects public safety.

### **III. HCD Findings Followed By City Responses**

Below are the City's individual responses to each of HCD's findings. We are committed to working with you and your staff to clarify our responses and to bring forward to City Council Planning Code amendments that comply with HCD comments or, where appropriate, findings necessary to show why we believe the Ordinance complies with State law.

**1) HCD Finding: Statutory Numbering** – The Ordinance reflects outdated statute numbering (65852.2, etc.) and must be updated to reflect current statute (66310 – 66324).

**City Response:** Thank you for your comments on this finding. The City commits to bring forward to Council the updates to the statutory numbering to reflect the current Government Code sections 66310-66324.

**2) HCD Finding: Section 17.103.080 A.7 – Fire Hazard Restrictions**  
– The Ordinance restricts the number and formats of ADUs within the S-9 combining zone, prohibiting all new construction ADUs and limiting developable conversion units to one ADU or JADU per lot. These restrictions were outlined as inconsistent with State ADU Law in HCD's July 5, 2023 findings letter (see finding #1, oakland-adu-07052023.pdf) and HCD is concerned that there have been no changes to these restrictions. Government Code section 66314, subdivision (a) allows local ADU Ordinances to "Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted," and so units created subject to that section may be restricted in this manner. However, Government Code section 66323 acts independently of 66314, stating "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

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following . . . .” Therefore, the City must exempt all units subject to Government Code section 66323 from the S-9 fire hazard restrictions.

**City Response:** Thank you for your comments on this finding. As previously noted, on August 4, 2023, the City responded to HCD’s July 5, 2023 findings letter. The City’s August 4, 2023 Response Letter included a detailed response to HCD’s finding regarding the Fire Hazard Restrictions.<sup>6</sup> We did not receive a letter from HCD in response to August 4, 2023 letter. The City attaches its August 4, 2023 Response Letter as **Attachment A** herewith in which the City set forth its detailed findings for its ADU regulation in the S-9 Combining Zone supported by Attachments A-G to that letter. The City’s public safety findings and rationale for regulating ADUs in the S-9 Combining Zone remain unchanged.

In addition, following the City’s August 4, 2023 Response Letter, the City Council adopted written findings as part of Ordinance No. 13800 C.M.S. establishing why its regulation of ADUs in the S-9 Combining Zone is consistent with State law. Specifically, on June 18, 2024, the City Council adopted the previous version of its ADU legislation at 13800 C.M.S. with findings beginning on **page 8** of the legislation establishing all of the reasons why regulation of ADUs in the S-9 Combining Zone is consistent with State law.<sup>7</sup> The City’s Agenda Report supporting the ADU legislation also discusses the findings supporting regulation of ADUs in the S-9 Combining Zone.

City Staff is available to meet and confer further with you on this finding. As discussed above, it is the City’s position is that it has satisfied State law, Government Code section 66326(b)(2)(B), by adopting findings establishing its regulation of ADUs in the S-9 Combining Zone is consistent with State law and needed for public safety. Specifically, the City believes it has already chosen the second option referenced in HCD’s December 10, 2025 Findings Letter by adopting written findings pursuant to Government Code section 66326(b)(2)(B) in 2024 when it adopted ADU Ordinance No. 13800 C.M.S (2024 ADU Legislation).

**3) HCD Finding: Section 17.103.080 A.9 and A.12.c – Visibility –**  
The Ordinance sets several limitations on ADUs and staircases necessary to serve ADUs based on visibility “from the public right of way.” However, “visibility from the public right of way” is a subjective concept, the use of which is inconsistent with Government Code section 66314, subdivision (b)(1), which

<sup>6</sup> Please see **Attachment A** to this letter for the City’s August 4, 2023 Response Letter with Attachments A-G. Specifically, the City’s response to HCD’s finding regarding ADU regulation in the City’s S-9 Combining Zone is located on pages 2-8, with supporting Attachments A-G.

<sup>7</sup> Please see the following link for the City’s previous ADU legislation and supporting Agenda Report *available at*:

<https://oakland.legistar.com/LegislationDetail.aspx?ID=6643799&GUID=71DD0DD2-1DFA-46E3-9D69-B7AD96F5400B&Options=ID|Text|&Search=13800>

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requires “objective standards” to be applied to ADUs. Additionally, these restrictions may not preclude any unit created subject to Government Code section 66323. The City must remove these restrictions or amend them with objective criteria and apply them only to units subject to Government Code section 66314.

**City Response:** Thank you for your comments on this finding. City staff viewed “visibility from the public right of way” as an objective standard since an improvement is either visible or not visible to the observer from specific locations in the public right-of-way, Therefore, the City considered the terminology objective since it is measurable and empirical. Nevertheless, City staff would be open to proposing an amendment that provides a more specific/objective benchmark, such as by measuring a quantifiable percentage (e.g. 50% or 100% of the structure) of visibility from any part of the fronting right-of-way. Alternatively, if we cannot arrive at an acceptable objective standard, City staff will propose a Planning Code amendment removing this requirement.

**4) HCD Finding: Section 17.103.080 A.10.a and b – Subjective Terminology** – The Ordinance uses the terms “predominant” and “visually similar” in describing design standards applicable to ADUs. However, Government Code section 66314, subdivision (b) requires local ordinances to apply only objective standards. The City must remove these terms.

**City Response:** Thank you for your comments on this finding. City Staff agrees to propose Planning Code amendments to Council that remove these terms. City staff requests that we meet with HCD staff to determine appropriate objective standards that may be added to the legislation to apply the intent of these provisions. For example, City staff may change “visually similar” by amendment to “the same” materials, which is an objective standard since it is measurable against existing materials in place. Before City staff proposes Planning Code amendments, however, we request consultation with HCD staff for their concurrence.

**5) HCD Finding: Section 17.103.080 A.12 and Table 17.103.02 – Front Setbacks** – The Ordinance requires that no other placement options exist before allowing an ADU in the front setback on a lot with a “California Register Property”<sup>8</sup> and on lots with multifamily primary dwellings. However, Government Code section 66321, subdivision (b)(3), which prohibits front setbacks from precluding a unit up to 800 square feet, does not provide for prerequisites (such as the lack of other placement options) from conditioning such units. The City must amend the Ordinance to provide this exception in both cases.

<sup>8</sup> HCD adds the following footnote: Please note that this term is undefined; State ADU Law does not refer to a “California Register Property” but to properties on the “California Register of Historical Resources.”

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**City Response:** Thank you for your comments on this finding. City Staff respectfully requests that we meet and confer on this finding. City Staff interprets Government Code section 66321(b)(3) to preclude the City from regulating an ADU as to lot coverage, floor area ratio, open space, front setbacks, and minimum lot size **“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.”** In other words, if the City is permitting an attached or detached ADU on the lot that complies with the minimum standards, then the regulation is permissible. The City’s Ordinance simply states an order of preference: if an ADU applicant can build an ADU on their lot that meets the minimum standards in the back yard, then the ADU applicant must choose that area before building into the front yard setback. The City is not denying an ADU meeting the minimum standards; it is simply creating an order of preference to prevent a prevalence of front-yard ADUs when there is available backyard space.

City staff did not interpret Government Code section 66323 to require a City to permit an ADU meeting the minimum standards anywhere on the lot of the applicant’s choosing, but rather that the City must ensure that any regulation of ADUs permits at least an 800-square-foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed with all other local development standards. If an ADU applicant could not build an ADU that meets the minimum standards anywhere on the lot except for in the front setback, then the front yard ADU would be permitted. Thus, the City is permitting any ADU meeting the minimum standards on the lot. We look forward to discussing this finding with you.


#### **IV. Conclusion**

If we cannot reach resolution on any of the above findings, we will either recommend the City Council amend the Ordinance to comply with HCD’s reading of State law (consistent with Government Code section 66326(b)(2)(A)) or adopt written findings as to why the City believes the Ordinance complies with State law pursuant to Government Code section 66326(b)(2)(B). Of course, as to the above Finding #2, entitled “Fire Hazard Restrictions”, the City asserts it has already adopted the necessary findings for its ADU regulations related to the S-9 Combining Zone when it adopted Ordinance No. 13800 C.M.S. in 2024.

City Staff appreciates HCD’s valuable feedback on the City’s Ordinance. Following your direction in the December 10, 2025 HCD Findings Letter, City Staff will contact Mike Van Gorder to schedule a meeting to meet and confer and seek further guidance on the above findings. We look forward to working with you on finalizing the ADU Ordinance compliance.

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Sincerely,



William A. Gilchrist  
Director, Planning and Building Department  
City of Oakland

cc: Brian P. Mulry, Supervising Deputy City Attorney, Land Use  
Ed Manasse, Deputy Director, City of Oakland Planning Bureau  
David Garza, California Housing and Community Development  
Mike Van Gorder, California Housing and Community Development  
David Zisser, California Housing and Community Development  
Laura Nunn, California Housing and Community Development  
Levi Armlovich, California Housing and Community Development  
Sydney Sloan, California Housing and Community Development  
Kathryren Mendoza, California Housing and Community Development

**Attachments:**

**Attachment A:** City of Oakland August 4, 2023 Response Letter to HCD Letter Dated July 3, 2023, with supporting Attachments A-G.