



## CITY OF GLENDALE, CALIFORNIA REPORT TO THE CITY COUNCIL

### AGENDA ITEM

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Report: Initiation of Code Amendments to Title 30 of the Glendale Municipal Code Related to Development Standards for Accessory Dwelling Units and Junior Accessory Dwelling Units

1. Motion Providing Direction for and Initiating Amendments to Title 30 of the Glendale Municipal Code Related to Development Standards for Accessory Dwelling Units and Junior Accessory Dwelling Units

### COUNCIL ACTION

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**Item Type:** Action Item

**Approved for** July 30, 2024 **calendar**

### EXECUTIVE SUMMARY

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Zoning standards for accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”) were first established in 2017 and have since been amended several times to bring them into compliance with constantly evolving State law. State law requires cities to ministerially approve ADUs and JADUs subject to very limited standards. Following a comprehensive review of the City’s ADU/JADU standards, the California Department of Housing and Community Development (“HCD”) alleges several standards are not in compliance with State law. Staff disagrees that many of such standards are out of compliance, but in some cases is recommending amendments to ADU/JADU zoning standards, while in other cases recommends that the Council adopting findings regarding the City’s compliance with State law. Staff has summarized the areas identified by HCD and provided options for amendments. This report is the first step in completing these amendments, in that staff is requesting that Council provide direction and initiate amendments to Title 30 of the GMC as it relates to development standards for ADUs and JADUs.

### RECOMMENDATION

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That the City Council review this report and provide direction regarding amendments to Title 30 of the Glendale Municipal Code related generally to zoning development standards for ADUs and JADUs.

## BACKGROUND/ANALYSIS

The City of Glendale first established zoning standards for ADUs in 2017 as a result of State legislation (AB 2299 and SB 1069) that required local agencies to ministerially approve ADUs. Since then, and in response to changing legislation from the State, the City has adopted a series of ordinances regarding zoning requirements for ADUs and JADUs on residential properties. The most recent update to the ordinance (Ordinance No. 5997) was adopted by City Council on November 15, 2022, and is codified in Glendale Municipal Code (GMC) Section 30.34.080 (“ADU/JADU Ordinance”).

In a letter dated December 7, 2023, HCD identified 16 general areas where they contend the City’s ADU ordinance conflicts with State law. The City responded to HCD on January 31, 2024, and addressed each of the 16 areas, analyzing reasons its ADU/JADU Ordinance complies with State law in all 16 areas, but committing nevertheless, to bring forth certain clarifying and other amendments to City Council for consideration. Since then, a series of written communications have been exchanged with HCD regarding the ADU/JADU Ordinance, including a Notice of Violation issued by HCD on June 19, 2024 that requires the City to either amend its ADU/JADU Ordinance to satisfy HCD’s findings of non-compliance, or adopt its own findings to explain reasons its Ordinance complies with State law.<sup>1</sup>

The City responded to the June 16 letter by reiterating its position that its ADU/JADU Ordinance complies with State law, but ultimately committed to a timeline for potential adoption of various amendments (or findings, as the case may be) to the Ordinance by early November of 2024. The first step in adoption of such amendments requires Council to initiate the changes and provide direction to staff. Below is a list of the topics associated with the 16 areas HCD initially identified in their December 7, 2023, letter.

1. Dwelling Unit Size
2. Where JADUs are Permitted
3. ADUs in Proposed Multi-Family Development
4. Size Limits on Attached ADUs
5. JADUs and Development Standards
6. Accessory Living Quarters\*
7. Street-Front and Street-Side Setback
8. JADUs and Short-Term Rentals
9. JADUs and Separate Sales
10. Unit Mix – Number of ADUs Allowed\*
11. Architectural Compatibility\*
12. ADUs Above a Detached Garage\*
13. ADUs in Proposed Multi-Family Development (Similar to #3)
14. Parking

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<sup>1</sup> Government Code Section 66326(b)(2) provides that if HCD finds a city’s ordinance does not comply with State law, a city must either amend its ordinance to make changes HCD claims are necessary to achieve compliance, or “[a]dopt the ordinance without changes. The [city must] include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with [State law] despite the findings of [HCD].”

15. Covenant and Agreement Requirements
16. JADUs and Owner Occupancy

For a majority of these items, staff agrees that clarifying amendments to the City's Zoning Code are prudent. For those items noted with an asterisk (\*), staff is specifically seeking direction from Council on how to proceed. Also, some of these topics are related to what is commonly referred to as a "mandatory ADU", which is an ADU that must be allowed, regardless of compliance with other zoning development standards (e.g., FAR, Lot Coverage, Landscaping, etc.) as long as it is limited to 800 square-feet (SF) in size, located at least four feet away from an interior setback and complies with the specified height requirements that range from 16 to 25 feet depending on location on-site and proximity to major transit. Gov't Code § 66321(b)(3); GMC § 30.34.080(E)(2).

If the City disagrees with HCD's claims and determines no amendments are necessary, Government Code Section 66326 requires the City to adopt findings explaining why its ordinance complies with State law. The following paragraphs summarize each of the 16 HCD-identified areas and staff's recommended course of action (whether to amend or adopt findings of compliance). These 16 topics are also discussed in a matrix included as Exhibit 1 to this report.

#### Dwelling Unit Size

HCD claims that Glendale's minimum dwelling unit sizes for ADUs and JADUs are more restrictive than the State's required minimums. This is a misunderstanding that can be easily clarified; the standards for minimum dwelling unit sizes in GMC Section 30.11.050 are specifically for standard dwelling units in multi-family zones and under no circumstances apply to ADUs or JADUs, which are defined separately with separate standards. In response to this claim, staff recommends amending the referenced section to clarify that the dwelling unit sizes in GMC Section 30.11.050 do not include ADUs or JADUs, which are defined and governed separately in GMC Section 30.34.080.

#### Where JADUs are Permitted

Government Code Section 66333 restricts JADUs to lots in single-family residential zones with either an existing or proposed single-family dwelling unit. HCD claims that the City's ADU/JADU Ordinance violates State law because JADUs are also permitted in the multi-family, commercial, mixed-use, special purpose, and transit-oriented development zones. The definition of a JADU and the standards specified in GMC Section 30.34.080 are clear that JADUs are restricted to single-family properties, meaning there is only one dwelling unit on the site, regardless of zone. This was done intentionally to be fair and equitable to the many single-family use properties located throughout different zones of the City.

The City acknowledges that State Law restricts JADUs to single-family residential *zones*, but in adopting regulations, the City did not interpret this provision as a prohibition on allowing JADUs on single-family use properties in other zones. Implementing this change will require amendments to the land use charts in the zoning code and DSP to omit references to JADUs. Moving forward, those properties that are developed with a single-family use outside of a single-family zone would no longer be eligible to construct a JADU,

and would be restricted to one or more ADU. Though, Council could find that the ADU/JADU Ordinance does not violate State law by being more permissive and allowing JADUs on single family properties in non-single-family zones, and thus, could direct staff to draft the necessary findings in accordance with Government Code § 66326 to keep this provision as-is, staff recommends that Council direct staff to amend Title 30 to address HCD's requested amendment.

#### ADUs in Proposed Multi-Family Development

This topic appears twice in the original HCD's December 2023 letter, and pertains to . GMC Sections 30.34.080(D)(1) and 30.34.080(F)(4), which appears to prohibit (or rather, exclude the allowance of) ADUs in proposed multi-family developments, where State law allows ADUs in proposed multi-family developments. This was an oversight and the City never intended to exclude proposed multi-family developments from constructing ADUs. The City has always allowed and will continue to allow a proposed multi-family development to construct ADUs as part of the development in accordance with applicable standards. Staff is recommending amending both referenced code sections to clarify that ADUs are allowed in proposed multi-family development, which will be consistent with current practice.

#### Size Limits on Attached ADUs

The development standards in GMC Section 30.34.080(D)(7) include restrictions on the size of ADUs that are proposed to be attached to the existing single-family residences, where the attached ADU cannot exceed 50% of the existing square-footage of the house. HCD claims that this provision violates State law because it would preclude an owner from developing a "mandatory ADU" which is restricted to a maximum size of 800 SF. Currently, the City abides by the requirement of State Law to allow an exception to the development standards when they would preclude the construction of a "mandatory ADU". Staff is recommending amending the applicable code section to clarify that the 50% restriction does not apply to the "mandatory ADUs", which will be consistent with our current practice.

#### JADUs and Development Standards

HCD cites GMC Section 30.34.080(D)(3) and claims that the City is in violation of State Law because the proper exception for JADUs is not specified in the ordinance as it relates to JADUs and the underlying zoning development standards. However, this is incorrect, because the GMC states that ADUs and JADUs are subject to the underlying zoning development standards applicable to the primary dwelling, except as set forth in the section. Staff is recommending amending the applicable code section to include a clarifying statement that specifically cites the code section for the mandatory ADUs and JADUs not subject to underlying zoning development standards.

#### Accessory Living Quarters\*

GMC Section 30.34.080(D)(9) establishes restrictions on single-family properties and allows either an ADU or accessory living quarters, but not both. An accessory living quarter can include any building with an "R" Occupancy per the California Building Code. Common examples include a guest house, pool house, recreation room, workshop, and

rumpus room. In their letter, HCD cites Government Code § 66314(d)(3) which provides a choice of the type of ADU created and includes attached or located within the primary dwelling (including attached garages, storage areas or similar uses), or an accessory structure.

HCD claims that because there is no language in State Law requiring an existing accessory living quarters to be converted to an ADU, that the City's restriction is in violation. Staff contends that since there is no language in State law specifically prohibiting a local agency from requiring a property with existing accessory living quarters from either converting it or demolishing it to build an ADU, that there is no violation of State law. The intent of this restriction was to minimize a proliferation of detached accessory buildings on lots which further reduces landscaping and open space, and contributes to additional lot coverage and FAR, and to encourage applicants to convert accessory living quarters to ADUs which contributes to independent living facilities to support renters. Staff is recommending that no amendments to the current ordinance be proposed and Council direct staff to draft the necessary findings in accordance with Government Code Section 66326. Alternatively, the Council can consider amending the ordinance to omit this prohibition, which would allow all applicants moving forward to maintain their accessory living quarters *and* build an ADU. If this alternative moves forward, staff recommends considering amending the residential standards to limit the number of accessory living quarters permitted on a property to minimize the proliferation of detached accessory buildings on single-family lots.

#### Street-Front and Street-Side Setback

Regardless of the city's street-front and street-side setback requirements, if construction of a "mandatory ADU" would be prohibited by such requirements, the City must allow such "mandatory ADU" in the street-front and street-side setback areas so long as the 4'-0" interior setbacks are provided. The City's current language in GMC Section 30.34.080(D)(10) already allows this for single-family properties in accordance with State Law. Staff oversight in drafting the ordinance originally excluded the multi-family ADUs in the language, however, our practice is to allow them in accordance with State Law. Staff is recommending clarifying language be added to the referenced section to include multi-family properties.

#### JADUs and Short-Term Rentals

The City has established a minimum rental term of 30 days for ADUs and JADUs in the Zoning Code. GMC § 30.34.080(d)(11) ("Any rental of an accessory dwelling unit and/or junior accessory dwelling unit created pursuant to this section shall be for a term longer than 30 days.") In other words, ADUs and JADUs cannot be used as home-sharing short-term rentals. HCD claims that the City is in violation of State law as it relates to JADUs because there are no restrictions on the rental terms established in State law for JADUs, only for ADUs. Staff disagrees that just because State law does not specify a minimum rental term for JADUs, does not mean the City cannot impose one. However, the Council can consider removing this restriction on JADU rental terms, which would allow JADU owners to rent their property on a short-term basis (subject to JADU owner-occupancy requirements and the City's home-sharing regulations).

### JADUs and Separate Sales

Starting January 1, 2024, cities have the option to allow the separate sale of ADUs from the primary dwelling, but the separate sale of JADUs is prohibited. HCD claims that the City should clarify that prohibition for JADUs. Staff disagrees that a clarification in the City's ADU/JADU Ordinance is necessary because the current Ordinance language already references the applicable sections of the Government Code. However, since this amendment would not be substantive, staff recommends that the Council direct staff to amend the language in GMC Section 30.34.080 to clarify that a JADU may not be sold separately under any circumstances.

### Unit Mix – Number of ADUs Allowed\*

HCD claims that the provisions of Government Code § 66323(a)(1) thru (4) require the City to allow a maximum of three units to be permitted on single-family properties consisting of one converted ADU, one detached new construction ADU, and one JADU. On multi-family properties, HCD claims that State law allow owners to combine the right to build two detached ADUs and multiple ADUs by converting existing non-livable space. The City does not agree that the intent of the referenced sections of State Law is to allow up to three accessory units on single-family properties, and multiple accessory units on multi-family properties by combining new construction and conversions.

The City Attorney's Office researched the legislative history of AB 68 and AB 881 (the bills that amended State ADU law to allow these combinations in 2019), and both contain reports evidencing that the legislature intended to allow a maximum of one ADU and one JADU in single-family developments. For example, with respect to AB 68, the April 3, 2019 report titled "Assembly Committee on Housing and Community Development", on page 4 under the heading "Relaxing ADU Standards", states: "[t]his bill makes major changes to the ADU statute to facilitate the development of more ADUs ... , including the following: Increases the number of AD Us allowed to be constructed per lot by potentially allowing two ADUs on lots with single-family homes, and multiple ADUs on lots with multi-family dwellings." Similar language is contained in the September 9, 2019 report titled "Concurrence in Senate Amendments", at page 2 ("This bill ... [i]ncreases the number of ADUs allowed to be constructed per lot by potentially allowing two ADUs on lots with single-family homes, and multiple ADUs on lots with multi-family dwellings.") Moreover, with respect to AB 881, the Senate Floor Analysis dated September 1, 2019 contains a table on page 5 that delineates that each lot may only have one JADU and one ADU.

HCD argues that the word "any" contained in Government Code Section 66323(a)(1-2) means that a property owner could construct any and all (a phrase that is missing from State law) of what follows. This is a strained and illogical reading of this section that contradicts the overall ADU/JADU statutory scheme. Section 66323's language requires a local agency to ministerially approve an application "to create any of the following" and then delineates what is clearly two different and distinct alternate scenarios: 1) a "converted" ADU and a JADU meeting certain specifications; or 2) a detached new construction ADU and a JADU. The legislature was clear that each type of ADU (converted or new construction) could also combine with a JADU (and only one JADU with each type of ADU). Under HCDs reading of the statute, requiring the allowance of

any and all of the listed types of ADUs/JADUs on one lot, an applicant could create each of the two kinds of ADUs *and* a JADU for each ADU (resulting in 2 ADUs and 2 JADUs). However, a lot cannot have more than one JADU pursuant to Government Code Section 66333. Accordingly, HCD's construction of the statutory language is not in harmony with Section 66333, and thus violates the rules of statutory construction. See *Skidgel v. California Unemployment Ins. Appeals Bd.*, 12 Cal. 5th 1, 14 (20 21) (holding court must "construe the words in question in context, keeping in mind the statutes' nature and obvious purposes. . . . [and] harmonize the various parts of the enactments by considering them in the context of the statutory [framework] as a whole"). The same statutory construction should thus apply to section 66323(a)(3-4), in that an applicant must choose either two detached ADUs or conversion of non-livable existing space up to 25% of the existing units. Accordingly, the City's position is that this section of its ADU/JADU Ordinance is in compliance with State law.

Staff is recommending that no amendments to the current Ordinance be proposed and Council direct staff to draft the necessary findings in accordance with Government Code § 66326 explaining why the City is in compliance with State law. Alternatively, at Council's direction, staff can draft amendments to the ADU ordinance to reflect HCD's interpretation of this section.

#### Architectural Compatibility\*

As it relates to design, State Law allows local agencies to establish objective standards for ADUs. The zoning standards in GMC 30.34.080 establish an "architectural compatibility" requirement for ADUs which means the proposal must use matching or complementary building materials unless compliance would preclude the development of a "mandatory ADU". HCD claims that the "architectural compatibility" requirement is subjective and therefore the city is in violation of State law. Staff is recommending omitting references in the zoning code to the architectural compatibility requirement for ADUs and creating objective standards, similar to what was created for SB9 units, but focusing on façades directly facing the street and second-story additions. Alternatively, Council may choose not to implement any objective design standards on ADUs. In that case, the only exception would be related to historic properties where the City would maintain existing language that prohibits changes visible from the public realm.

#### ADUs Above a Detached Garage\*

Currently, the zoning requirements for ADUs prohibit ADUs to be built on top of existing detached garages or carports. This was allowed for the first few years of Glendale's ADU/JADU Ordinance, however, in 2020 the Council amended the Ordinance to prohibit this type of ADU from being constructed. This change was in response to an increase in the number of complaints from residents regarding privacy issues.

Government Code § 66314(d)(3) allows ADUs to be attached to detached garages and HCD is asserting that the term "attached" would include an ADU built on top of an existing detached garage. The City maintains that neither the language nor intent of State law supports this claim. The referenced Government Code section mandates that the City allow an ADU to be attached to or located within the space of the primary dwelling

(including attached garages and other areas that are attached), or mandates that the City allow an ADU to be converted from an accessory structure, or that the ADU be detached from the primary dwelling, including detached garages. The City allows all of these scenarios and is therefore in compliance. Staff is recommending that no amendments to the current ADU/JADU Ordinance be proposed and Council direct staff to draft the necessary findings in accordance with Government Code § 66326. Alternatively, at Council's direction, staff will craft amendments to the ADU ordinance to allow an ADU above a detached garage or carport. If Council elects this option, staff can also draft objective design standards for such ADUs that could minimize privacy concerns, such as prohibiting windows and/or balconies from overlooking a neighboring property.

#### Parking

HCD identified one of the required parking exceptions for ADUs that is specified in State law and missing from the City's ADU/JADU Ordinance. The exception would not require parking be provided for the ADU when submitted with a permit application to build a new single-family dwelling or new multi-family dwelling, so long as the ADU satisfies other criteria in the sub-section. This was an oversight by the City to not include this exception and staff is recommending amending the ADU/JADU Ordinance to include this.

#### Covenant and Agreement

Currently, all property owners developing an ADU and/or JADU on their property are required to enter into a covenant and agreement with the City regarding prohibition of individual sales, compliance with required parking, owner-occupancy restrictions on JADUs, short term rental prohibitions, that the permit runs with the land, and provisions for when the ADU and/or JADU must be removed. HCD contends that because State law does not require deed restrictions for ADUs, the City's requirement for the Covenant and Agreement is in violation of State law. The City disagrees that simply because State law does not require a deed restriction for ADUs, it prohibits the City from requiring one. However, the main reason for the ADU covenant in the first place was to ensure current and future owners would have notice of the owner-occupancy requirement for a property with an ADU, but this requirement was eliminated by State law effective January 2020. Accordingly, since the main purpose of the Covenant (notice of owner-occupancy requirement) has been eliminated, staff recommends that Council direct staff to remove the requirement to enter into and record a covenant as a condition of approval of an ADU building permit application.

#### JADUs and Owner Occupancy

Pursuant to State law, the owner of a property with a JADU is required to live in either the JADU or the remaining portion of the residence. Government Code § 66333(b). The City's ADU/JADU Ordinance, however, provides that if the owner does not live on-site, the property can only be rented as a whole (meaning that, though the owner does not have to live at the property, the residential dwelling and JADU cannot be rented separately to different renters). The City's ADU/JADU Ordinance is more permissive than State law, which, again, requires owner-occupancy for properties with an existing JADU. The City's position has been that a more permissive standard is allowed under State law. However, the plain language of Section 66333(b) requires owner-occupancy of properties with a



JADU, and thus, staff recommends that Council direct staff to amend the ADU/JADU Ordinance to make this change to be consistent with State law, requiring an owner of a property with a JADU to live at the property.

## **STAKEHOLDERS/OUTREACH**

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Stakeholder and public outreach may be conducted during policy studies. Council may provide any additional direction regarding outreach methods; however, Council should note that the City has committed to HCD that it will follow a timeline that ensures adoption of amendments by early November.

## **FISCAL IMPACT**

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There is no fiscal impact associated with this report.

## **ENVIRONMENTAL REVIEW (CEQA)**

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No environmental review is required for City Council to initiate code changes, as it can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment, but such review will be conducted prior to Code adoption. The amendments will likely be exempt from further environmental review, as they will concern former Government Code Sections 65852.2 and 65852.22, second units in a single-family or multifamily residential zone, which are exempt from further review per the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code Section 21080.17 and California Code of Regulations, Title 14, Chapter 3, Section 15282(h).

## **CAMPAIGN DISCLOSURE**

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This item is exempt from campaign disclosure requirements.

## **ALTERNATIVES TO STAFF RECOMMENDATION**

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1. Decline to direct staff to begin the process of modifying the Zoning Code for ADU/JADU development standards.
2. Choose any other alternative not proposed by staff.

## **ADMINISTRATIVE ACTION**

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### **Submitted by:**

Bradley Calvert, Director of Community Development

### **Prepared by:**

Vista Ezzati, Principal Planner

### **Approved by:**

Roubik R. Golanian, P.E., City Manager

## **EXHIBITS/ATTACHMENTS**

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**Exhibit 1:** ADU/JADU Matrix Regarding HCD Claims and City Responses