

February 26, 2025

City of Capitola Draft ADU Ordinance Flyover

Reviewed by: David Barboza

The following comments reflect conflicts between current State Accessory Dwelling Unit (ADU) Laws and the ADU regulations found in the City of Capitola's ADU Ordinance No. 1066 adopted on November 14, 2024 (Ordinance). Where local ADU regulations conflict with State ADU Law without basis in any superseding laws, the City must amend the 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.

Findings

1. Table 17.16-1¹ lists permitted uses in the R-1, R-M and MH zones. While ADUs are listed as a permitted use in the R-1 and R-M zones, Junior Accessory Dwelling Units (JADUs) are not listed as permitted uses in any of these zones. JADUs are a permitted use in zones that permit single-family primary dwellings.
2. Table 17.20-1 lists permitted uses in the MU-V and MU-N zones. While ADUs are listed as a permitted use in the MU-V and MU-N zones, JADUs are not listed as permitted uses in either zone. JADUs are a permitted use in zones that permit single-family primary dwellings.
3. Sections 17.74.020.A and 17.160.020.A.2 define the term "accessory dwelling unit" in slightly different ways. Both definitions differ from the statutory definition of an ADU in Government Code section 66313, subdivision (a).
4. Section 17.74.020.D defines an "internal ADU" as: "an accessory dwelling unit that is fully contained within the existing space of the primary dwelling unit or an accessory structure." However, this type of ADU, which HCD refers to as a "conversion ADU," also includes a single-family conversion ADU with an addition of up to 150 square feet for ingress and egress.² A conversion ADU also includes an ADU built in the same location and to the same dimensions as a structure that was demolished as part of the project.³
5. Section 17.74.020.F defines "multifamily dwelling" as "a structure with two or more dwelling units." However, a multifamily dwelling must be on a single lot to be considered as such for purposes of State ADU Law.⁴

¹ All references to sections listed first in each finding are to the Ordinance, unless otherwise noted.

² Gov. Code, § 66323, subd. (a)(1).

³ Gov. Code, § 66314, subd. (d)(7).

⁴ When property lines place different dwelling units in the same structure on different lots, those units are single-family dwelling units for purposes of State ADU Law (HCD 2025 ADU Handbook, pages 10, 11 & 29).

6. Section 17.74.030.A.4 states: “If the accessory dwelling unit application is submitted with a permit application to create a new single-family or multifamily dwelling on the parcel, the city may delay approving or denying the accessory dwelling unit application until the city approves or denies the permit application for the new **single-family dwelling**” (emphasis added). However, the phrase in bold should read “single-family or multifamily dwelling.”⁵
7. Section 17.74.030.F.1 states: “If a design permit is required for an accessory dwelling unit on a property with a historic resource, the proposed project is subject to the requirements in Chapter 17.84 (Historic Preservation).” However, regarding historic preservation standards applied to ADU applications, State ADU Law limits local agencies to objective standards to protect resources on the California Register of Historical Resources.⁶
8. Section 17.74.030.H contains standards for permitting unpermitted ADUs. However, these standards must be aligned with Government Code section 66332, regarding the cutoff date, JADUs, and the need for a health and safety finding to be based on Health and Safety Code section 17920.3.
9. Section 17.74.040.C states: “If two or more dwelling units are on a parcel with a nonresidential use, the dwelling units are considered a multifamily dwelling.” However, eligibility for multifamily ADUs under Government Code section 66323, subdivisions (a)(3) and (a)(4) is based on having an existing or proposed multifamily primary dwelling (i.e., two or more attached dwelling units on one lot).
10. Section 17.74.040.E states: “The city shall not require accessory dwelling units to provide fire sprinklers if they would not be required for the primary residence **under the current fire code**” (emphasis added). However, if an existing primary residence was not required to have fire sprinklers at the time it was permitted, the ADU may not be required to have fire sprinklers.⁷
11. Section 17.74.040.G states: “An accessory dwelling unit shall not be sold or conveyed separately from the primary dwelling except as provided in Government Code Section 66340-66342.” However, the City should clarify whether it is exercising its authority to allow ADUs to be sold separately as condominium units pursuant to Government Code section 66342.
12. Section 17.74.040.H.1 states: “Maximum building coverage, floor area ratio, front setbacks, and private open space standards in Section 17.74.080 (Development standards) shall not prohibit an accessory dwelling unit with up to eight hundred square feet of floor area, up to sixteen feet in height, and four-foot side and rear yard setbacks, provided the accessory dwelling unit complies with all other applicable standards.” However, the corresponding section of State ADU Law, Government Code section 66321, subdivision (b)(3), also lists additional requirements which must be waived if they would not permit such an ADU.

⁵ Gov. Code, § 66317, subd. (a).

⁶ Gov. Code, § 66314, subd. (b)(1). An exception may apply if the City adopted an ADU ordinance described in Government Code section 66323, subdivision (g) by July 1, 2018. If this is the case, please provide a copy of the ordinance and indicate where it permits ADUs in multifamily dwelling structures.

⁷ Gov. Code, § 66314, subd. (d)(12).

13. Section 17.74.040.I.3 states: “If any portion of an existing structure crosses a property line, the structure may not be converted to or replaced with an accessory dwelling unit.” However, this requirement leads to unreasonable outcomes in some situations. For example, a duplex bisected by a property line along the common wall (a “half-plex”) is eligible for single-family ADUs and a JADU on each lot.⁸
14. Section 17.74.040.J.1.a states a manufactured home to be used as an ADU must “Provide a minimum of three hundred twenty square feet of floor area.” However, Health and Safety Code section 18007, subdivision (a) states: “‘Manufactured home’ includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974.”
15. Section 17.74.040.L creates special application requirements for ADUs in properties with homeowner’s associations (HOAs). The application must: “1. Be signed by an authorized officer of the HOA; and 2. Include a written statement from the HOA stating that the application is authorized by the HOA, if such authorization is required.” However, requiring pre-approval by an HOA contradicts provisions of State ADU Law which limit review time and prohibit certain requirements in an ADU ordinance.⁹
16. Section 17.74.040.M states: “Pursuant to the authority provided by Section 65852.21(f) of the Government Code, no accessory dwelling unit or junior accessory dwelling unit shall be permitted on any lot in a single-family zoning district if: (1) an urban lot split has been approved pursuant to Chapter 16.78 of this code; and (2) **an SB 9 residential development with two units has been approved for construction** pursuant to Chapter 17.75 of this code” (emphasis added). However, the ordinance should clarify that there is a two-unit cap on **each lot** created by an SB 9 urban lot split.¹⁰
17. Section 17.74.050 states: “The city shall ministerially approve an application for a building permit within a residential or mixed use zoning district to create the following types of accessory dwelling units.” However, Ordinance should clarify that the ADUs described in Government Code section 66323, subdivisions (a)(1) and (a)(2) may be combined on a lot with an existing or proposed single-family dwelling. The ADUs described in Government Code section 66323, subdivisions (a)(3) and (a)(4) may be combined on a lot with a multifamily dwelling.
18. Section 17.74.050.A states: “One internal accessory dwelling unit **or** junior accessory dwelling unit per parcel with a proposed or existing single-family dwelling if all of the following apply:” (emphasis added). However, the corresponding section of State ADU Law, Government Code section 66323,

⁸ HCD 2025 ADU Handbook, page 29.

⁹ Gov. Code, §§ 66317, subd. (a); 66315.

¹⁰ Thus, a qualifying single-family lot may be split into two lots and two units may be built on each lot, for a total of four units. An ADU or a JADU may coexist with a primary dwelling unit on either or both lots under the two-unit cap.

subdivision (a)(1) reads “One accessory dwelling unit **and** one junior accessory dwelling unit per lot” (emphasis added).

19. Section 17.74.050.B contains regulations for “**One-Story** Detached Accessory Dwelling Units Eight Hundred Square Feet or Less” (emphasis added). However, State ADU Law does not limit setback requirements or building height based on whether an ADU will have one or two stories.
20. Section 17.74.050.B.3 sets a maximum height of “sixteen feet or 18 feet as allowed by Government Code Section 66321(b) (4).” However, Government Code section 66321, subdivision (b)(4)(B) allows a detached ADU height of 18 feet plus two additional feet (for a total of 20 feet) if needed to match the roof pitch of the primary dwelling unit.¹¹
21. Section 17.74.050.D.1 allows “Not more than two detached accessory dwelling units that are located on a parcel that has an existing or proposed multifamily dwelling, subject to the following: a. Maximum height: eighteen feet.” However, Government Code section 66323, subdivision (a)(4) was recently amended to allow up to eight ADUs detached from an existing multifamily dwelling.¹² As discussed in Finding 20, there is a situation in which State ADU Law allows a detached ADU height of 20 feet.
22. Section 17.74.070.A requires “planning commission approval of a design permit” for any two-story ADU. However, this appears to be a requirement for a discretionary permit other than a coastal development permit (CDP). ADUs are subject to ministerial review, except for CDPs, when CDPs are applicable.¹³
23. Table 17.74-1 requires an ADU to have front setbacks that are the “Same as primary dwelling” except as noted in section 17.74.080.B. However, front setbacks must be waived to the extent that they would not permit an ADU described by Government Code section 66321, subdivision (b)(3).
24. Table 17.74-1 limits a one-story detached ADU to a height of 18 feet. However, as noted in Finding 20, there is a situation in which State ADU Law allows a detached ADU height of 20 feet.
25. Section 17.74.080.C.2.c lists exceptions to parking requirements for ADUs. However, it is missing the exception described in Government Codes section 66322, subdivision (a)(6), regarding ADUs with proposed primary dwellings.
26. Section 17.74.080.C.2.c.i refers to the definition of public transit in Government Code section “66313(l).” However, the definition is in Government Code section 66313, subdivision (m).
27. Section 17.74.080.C.2.d states: “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, replacement parking stalls are not required for the demolished or converted parking structure.”

¹¹ The [Site Check](#) website shows portions of Capitola are within ½ mile of a high-quality transit corridor.

¹² SB 1211 (Chapter 296, Statutes of 2024). Up to eight detached ADUs means the number of detached ADU shall not exceed the number of existing units on the lot.

¹³ Gov. Code, § 66317, subd. (a).

However, the corresponding section of State ADU Law also protects demolition of an uncovered parking space from replacement parking requirements.¹⁴

28. Section 17.74.090.B.1 states: “For a single-story wall or the first story of a two-story wall, privacy impacts shall be minimized by either: a. A six-foot solid fence on the property line; or b. Clerestory or opaque windows for all windows facing the adjacent property.” However, the requirement for a six-foot solid fence may not be possible to comply with for ADUs located in the front yard¹⁵ if the City limits the height of fences in the front yard to less than six feet. The term “clerestory window” refers to a window set high on a wall but is ambiguous regarding how high above the floor the window must be placed. The requirement for clerestory windows potentially conflicts with egress requirements in the California Building Standards Code.¹⁶
29. Section 17.74.090.C states: “Second-story decks and balconies shall be located and designed to minimize privacy impacts on adjacent residential properties, as determined by the planning commission through the design permit approval process.” However, this is a subjective standard defined through a discretionary review process and ADUs must be reviewed ministerially, using objective standards.¹⁷
30. Table 17.74-2, footnote [1], defines a historic resource by reference as a resource designated at the local, state or national level. However, as noted in Finding 7, State ADU Law limits local agencies to objective standards to protect resources on the California Register of Historical Resources.¹⁸
31. Section 17.74.110.A states: “The planning commission must make the findings in this section to approve a design permit for: 1. Two-story attached or detached accessory dwelling units greater than sixteen feet in height;”. However, this requires a discretionary permit other than a CDP for ADUs that must be reviewed ministerially.¹⁹ Heights greater than 16 feet are allowed in some situations by State ADU Law.²⁰
32. Section 17.74.120 states: “Prior to issuing a certificate of occupancy for an accessory dwelling unit, the property owner shall file with the county recorder a declaration of restrictions containing a reference to the deed under which the property was acquired by the current owner.” However, a deed restriction may not be required for an ADU, with limited exceptions.²¹

¹⁴ Gov. Code, § 66314, subd. (d)(11).

¹⁵ Gov. Code, § 66321, subd. (b)(3).

¹⁶ See for example, California Residential Code section R310.2.3.

¹⁷ Gov. Code, §§ 66314, subd. (b)(1); 66317, subd. (a).

¹⁸ See also footnote 6.

¹⁹ Gov. Code, § 66317, subd. (a).

²⁰ Gov. Code, § 66321, subd. (b)(4).

²¹ Gov. Code, § 66315. The exceptions are for a JADU and for an ADU sold separately at an affordable housing cost to a qualified buyer (Gov. Code, §§ 66333, subd. (c); 66341, subd. (b)).

Next Steps

Please contact us using the information below if you have any questions or comments about this review.

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