

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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September 11, 2024

Barry Curtis
Economic and Development Services Director
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Dear Barry Curtis:

RE: Review of Costa Mesa's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, §§ 66313 - 66342)

Please Note: As of March 25, 2024, with the Chaptering of Senate Bill (SB) 477 (Chapter 7, Statutes of 2024), the sections of Government Code relevant to State ADU and junior accessory dwelling unit (JADU) Law have been renumbered (Enclosure 1).

Thank you for submitting the City of Costa Mesa (City) accessory dwelling unit (ADU) Ordinance No. 2023-03 (Ordinance), adopted February 22, 2023, to the California Department of Housing and Community Development (HCD). HCD has reviewed the Ordinance and submits these written findings pursuant to Government Code section 66326, subdivision (a). HCD finds that the Ordinance does not comply with State ADU and JADU Laws in the manner noted below. Under section 66326, subdivision (b)(1), the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than October 11, 2024.

The Ordinance addresses many statutory requirements; however, HCD finds that the Ordinance does not comply with State ADU Law in the following respects:

1. *Statutory Numbering* - The Ordinance contains several references to code sections that were deleted by SB 477, effective March 25, 2024. These include Government Code sections 65852.2, 65852.22 and 65852.26. The contents of these sections were relocated to Government Code, Title 7, Division 1, Chapter 13 (sections 66310-66342, see Enclosure). The City must amend the Ordinance to refer to the correct code sections
2. Section 13.35 (b)(3) – *Ministerial Approval* – The Ordinance states, “Any application for an ADU that meets the requirements of this section shall be approved ministerially by the city by applying the standards herein and without a public hearing or notice of decision or zoning approval.” 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.” It later requires that “If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subdivision (a), the permitting agency shall, within the time period described in subdivision (a), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.”

The City must amend the Ordinance to add these provisions.

3. Section 13.35 (b)(4)a. and (b)(4)b. – *Unit Allowance* – The Ordinance states that, “Only one category may be used per lot...” when introducing the different formats of allowable units with single family dwellings. Later, the Ordinance states “...the applicant may have ADUs pursuant to one of the following...” when introducing the formats of units allowable with multifamily dwellings.

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: (1) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling...(A) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single family dwelling or existing space of a single-family dwelling or accessory structure.” Subparagraph (2) permits “[o]ne detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks.” The use of the term “any” followed by an enumeration of by-right ADU types permitted indicate that any of these ADU types can be combined on a lot zoned for single-family dwellings.

This permits a homeowner, who meets specified requirements, to create one converted ADU; one detached, new construction ADU; and one JADU. Thus, if the local agency approves an ADU that is created from existing (or proposed) space, and the owner subsequently applies for a detached ADU (or vice versa) that meets the size and setbacks pursuant to the subdivision, the local agency cannot deny the application, nor deny a permit for a JADU under this section. HCD notes that the Legislature, in creating the list, did not use “or” or “one of” to indicate only one or another would be applicable to the exclusion of the other.

This subdivision also applies to ADUs created pursuant to Government Code section 66323, subdivisions (a)(3) and (4), on lots with proposed or existing multifamily dwellings. Limiting single-family lots to one ADU would prevent

property owners from creating ADUs by-right under subdivision (a). Therefore, the City must amend the Ordinance to allow state-mandated by-right ADU combinations. Therefore, the City must amend the Ordinance to comply with State ADU Law.

4. Section 13.35 (b)(4) – *JADUs and Multifamily* – The Ordinance states, “Junior ADUs are not allowed on a lot with more than one residence.” However, Government Code section 66333, subdivision (a) requires that local ordinances “limit the number of junior accessory dwelling units to *one per residential lot* zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.” If the underlying lot is zoned for single-family residences, then statute permits a maximum of one JADU per lot (not per single-family residence on the lot). Therefore, the City must amend the language to note that lots zoned for single family residences may have a single JADU per lot.
5. Section 13.35 (b)(4) – *Multifamily* – The Ordinance states, “ADUs are not allowed within new construction residences where, after construction, there will be at least two (2) residences on the lot (e.g. detached residential structures, duplexes, apartments). . . .” However, Government Code section 66314, subdivision (d)(2) permits one ADU subject to local development standards on a lot if “[t]he lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.” Therefore, the City’s restriction on ADUs with new construction multifamily residences conflicts with statute. The City must remove this reference.
6. Section 13.35 (b)(5)(b) – *Maximum Sizes* – The Ordinance states, “For lots with an existing legal multifamily dwelling structure proposing one (1) new construction detached ADU, the ADU shall not exceed one thousand two hundred (1,200) square feet. For lots with an existing or proposed legal multifamily dwelling structure proposing two (2) detached ADUs, the ADUs shall not exceed eight hundred (800) square feet. . . .” However, local design standards may not preclude a unit created subject to Government Code section 66323; therefore, the maximum sizes stated in this section may not apply to any unit created subject to Government Code section 66323, subdivision (a)(4). The City must amend the Ordinance to comply with State ADU Law.
7. Section 13.35 (b)(4)c. – *Common Interest Developments* – The Ordinance states, “One conversion ADU may be permitted per unit on lots with common interest developments.” However, ADU law applies to any lot that is zoned to allow residential development. Civil Code Section 4751, subdivision (a) states “Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an

accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Article 2 (commencing with Section 66314) or Article 3 (commencing with Section 66333) of Chapter 13 of Division 1 of Title 7 of the Government Code, is void and unenforceable. “ Therefore, this section is inconsistent with development allowances permissible under Government Code sections 66314 and 66323. State ADU Law provides for the creation of detached and attached ADUs, not just conversions, in areas zoned to allow single-family and multifamily dwelling residential use. The City must amend the Ordinance to comply with State ADU Law.

8. Section 13.35 (c)(4) and (d)(16) – *JADU Rental Terms* – The Ordinance states, “A Junior ADU shall not be rented for periods of less than 31 days unless otherwise authorized by the municipal code.” It later states “ADUs and Junior ADUs shall not be rented for a term of less than thirty-one (31) days, unless otherwise authorized by this code.” However, Government Code section 66333 does not provide rental term limits for JADUs and is thus inconsistent with State JADU Law. Therefore, the City must amend the Ordinance accordingly.
9. Section 13.35 (c)(5) – *Attached Garage* – The Ordinance states, “A Junior ADU shall be entirely within an existing or proposed single-family dwelling.” However, Government Code section 66333, subdivision (d) expands this allowance to state “For purposes of this subdivision, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” Therefore, the City must amend the Ordinance accordingly.
10. Section 13.35 (d) – *Development Standards* – The Ordinance states, “All ADUs and Junior ADUs must comply with the following requirements....” However, local design standards provided by the Ordinance pursuant to Government Code section 66314, may not preclude a unit built subject Government Code section 66323 (a), which includes all converted units, all JADUs, 800 square foot new-construction detached units with four-foot setbacks with single-family primary dwellings, and detached units with multifamily primary dwelling structures. The City must note the exceptions.
11. Section 13.35 (d)(3) – *Separate Sale* – The Ordinance states, “Except as otherwise provided by law, (e.g. Government Code section 65852.26), ADUs... may not be sold or otherwise conveyed separate from the primary residence.” Please note that with the adoption of AB1033, the City now has the option to adopt an ordinance to govern the separate sale of an ADU from its primary dwelling.
12. Section 13.35 (d)(5) – *Deed Restrictions* – The Ordinance requires a covenant as a precondition to a building permit. However, Government Code section

66315 states, “No additional standards, other than those provided in Section 66314, shall be used, or imposed....” A deed restriction would be an “additional standard” and thus cannot be imposed. Therefore, the City must remove this section.

13. Section 13.35 (d)(5)b. – *Owner-Occupancy* – The Ordinance requires owner-occupancy “for ADUs approved on or after January 1, 2025....” However, effective January 1, 2024, Government Code section 66315 states “No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement...” The City must remove this section to comply with the State ADU Law.

14. Section 13.35 (d)(8)b., 13.35 (d)(9)a.1. - *Front Setbacks* – The Ordinance requires “Minimum of setbacks of four (4) feet from side and rear property lines and full compliance with all applicable front yard setbacks for the underlying zone. Second floor ADUs shall provide setbacks in conformance with the underlying zone.” It later requires that “All portions of the ADU structure on a second floor are at least twenty-five (25) feet from the front property line....” However, Government Code section 66321, subdivision (b) 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.” Therefore, the City’s application of front setback restrictions that would preclude such a unit would be inconsistent with State ADU Law. The City must amend the Ordinance accordingly.

15. Section 13.35 (d)(9) – *Height* – The Ordinance states, “Except as authorized in subsection b, below, in no event may any portion of a new construction ADU exceed two (2) stories or exceed the height of any other dwelling that could legally be on the property. In all cases, a height of at least eighteen (18) feet shall be allowed for ADUs. An additional two feet in height may be permitted to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.”

However, Government Code section 66321, subdivision (b)(4)(D) requires “A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling.” Additionally, section 66321, subdivision (b)(4)(B) requires the allowance of “an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit” under the conditions of that

subsection. Therefore, the City must amend the Ordinance to comply with State ADU Law.

16. Section 13.35 (d)(10) a. – *Exterior Stairways* – The Ordinance states, “A new exterior stairway to a second floor ADU shall not be visible from the public right of way at the front of the property.” However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66323, may not preclude a unit built subject Government Code section 66323, which includes all converted units, all JADUs, 800 square foot new construction detached units with four-foot setbacks, and detached units with multifamily primary dwelling structures. Visibility restrictions on a stairway necessary to serve such a unit may not preclude the unit or its stairway. Therefore, the City must note that section 66323 units are excepted and should add “when feasible” to the existing language.
17. Section 13.35 (d)(11)(b) – “*Compatible*” – The Ordinance states, “Any detached ADU shall be compatible in exterior appearance with the primary unit or units in terms of design, materials, finishes, and colors....” However, Government Code section 66314, subdivision (b)(1) requires that a local agency “Impose objective standards on accessory dwelling units”. Government Code section 66313, subdivision (h) defines “Objective standards” as “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.” As “compatible” is a term that is subjective, this section is inconsistent with State ADU Law. Therefore, the City must amend the Ordinance to remove subjective terminology.
18. Section 13.35 (d)(11)c. – *JADUs and Exterior Appearance* – The Ordinance states, “Junior ADUs shall match exterior appearance with the primary unit in terms of design, materials, finishes, and colors within the same property on which it is proposed to be constructed....” However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323, which includes all JADUs. Therefore, the City must remove this section.
19. Section 13.35 (d)(12) – *Garage Conversion* – The Ordinance requires design standards in the event of a garage conversion. However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323, which includes all converted units and all JADUs, both of which may be created in garages. Therefore, the City’s design standards may not preclude converted units. The City must note the exceptions.

20. Section 13.35 (d)(13) – *Entry* – The Ordinance requires that entry for ADUs and JADUs “...not be located on the same building elevation as the main reentrance of the primary residence(s) and shall be located along the building side, rear, or within the interior of the property...” However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323. The City must note the exceptions.

21. Section 13.35 (d)(17) – *Open Space and Landscaping* – The Ordinance requires that, “ADUs which exceed eight hundred (800) square feet in gross floor area shall meet the open space requirements of section 13-32 and shall be subject to provide landscaping...” However, and as above, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323. The City must note the exceptions.

Please note that the City has two options in response to this letter. The City can either amend the Ordinance to comply with State ADU Law¹ or 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 ADU Law despite HCD’s findings². 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 Law³.

HCD appreciates the City’s efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please contact Mike Van Gorder, of our staff, at (916) 776-7541 or at mike.vangorder@hcd.ca.gov if you have any questions or would like HCD’s technical assistance in these matters.

Sincerely,



Jamie Candelaria
Senior Housing Accountability Manager
Housing Policy Development Division

¹ Gov. Code, § 66326, subd. (b)(2)(A).

² Gov. Code, § 66326, subd. (b)(2)(B).

³ Gov. Code, § 66326, subd. (c).

State ADU/JADU Law Statutory Conversion Table

New Government Code Sections	Previous Government Code Sections
Article 1. General Provisions	
66310	65852.150 (a)
66311	65852.150 (b)
66312	65852.150 (c)
66313	General Definition Section 65852.2 (j) 65852.22 (j)
Article 2. Accessory Dwelling Unit Approvals	
66314	65852.2(a)(1)(A), (D)(i)-(xii), (a)(4)-(5)
66315	65852.2 (a)(8)
66316	65852.2 (a)(6)
66317	65852.2 (a)(3), (a)(7)
66318	65852.2 (a)(9), 65852.2 (a)(2)
66319	65852.2 (a)(10)
66320	65852.2 (b)
66321	65852.2 (c)
66322	65852.2 (d)
66323	65852.2 (e)
66324	65852.2 (f)
66325	65852.2 (g)
66326	65852.2 (h)
66327	65852.2 (i)
66328	65852.2 (k)
66329	65852.2 (l)
66330	65852.2 (m)
66331	65852.2 (n)
66332	65852.23.
Article 3. Junior Accessory Dwelling Units	
66333	65852.22 (a)
66334	65852.22 (b)
66335	65852.22 (c)
66336	65852.22 (d)
66337	65852.22 (e)
66338	65852.22 (f)-(g)
66339	65852.22 (h)
Article 4. Accessory Dwelling Unit Sales	
66340	65852.26 (b)
66341	65852.26 (a)
66342	65852.2 (a)(10)