

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

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November 4, 2022

Jonathan Orduna  
Community Development Director  
City of Laguna Niguel  
30111 Crown Valley Parkway  
Laguna Niguel, CA 92677

Dear Jonathan Orduna:

**RE: Review of Laguna Niguel's Accessory Dwelling Unit (ADU) Ordinance under  
ADU Law (Gov. Code, § 65852.2)**

Thank you for submitting the City of Laguna Niguel (City) accessory dwelling unit (ADU) Ordinance No. 2021-211 (Ordinance), adopted August 3, 2021, to the California Department of Housing and Community Development (HCD). The Ordinance was received on August 18, 2021. HCD has reviewed the Ordinance and submits these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD finds that the Ordinance does not comply with section 65852.2 in the manner noted below. Under that statute, 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 December 4, 2022.

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

- Section 9-1-35.26 (d)(1) – *Zoning* – The Ordinance states that “ADUs shall be allowed in all single-family and multifamily zoning districts and that this does not include mixed-use zoning districts, except for those ADUs approved per Government Code section 65852.2, subdivision (e).” (Emphasis added.) However, Government Code section 65852.2, subdivision (a), permits ADUs in all areas zoned to allow single-family and multifamily. Hence, ADUs may be allowed in zones, such as agricultural, commercial, or mixed-use zones wherever residential uses are allowed. Therefore, the City should remove the exclusion for ADUs in mixed-use zones that allow single-family and multifamily development and add clarifying language to allow ADUs permitted under Government Code section 65852.2, subdivision (a), wherever single-family or multifamily residential is permitted, including mixed-use zones.
- Sections 9-1-35.26 (d)(2) and (d)(14)(a) – *Sale and Rental of Units and Deed Restriction* – The Ordinance states in both places that an ADU shall not be sold

separately from the primary dwelling. However, Government Code section 65852.26 creates a narrow exception to allow separate conveyance of an ADU to a qualified buyer if the property was built or developed by a qualified non-profit corporation, among other things. The City must revise the Ordinance to allow for such an exception.

- Section 9-1-35.26 (d)(3)(a) and Section 9-1-35.27 (c)(4) – *Omitted Conversions* – The Ordinance states that “in single family zoning districts, an applicant shall be allowed to construct one (1) detached or attached ADU per lot.” In the section governing JADUs, it also states “...in addition to the one (1) JADU allowed in this section, an applicant may also construct one (1) attached or detached ADU....” However, in only mentioning attached or detached categories, the City has omitted *converted* units, which may be neither attached nor detached, but are created within the proposed or existing primary dwelling, per Government Code section 65852.2, subdivision (e). Therefore, the City must add language allowing for converted units to these sections.
- Section 9-1-35.26 (d)(3)(b)(3) – *Combination with Multifamily* – The Ordinance states that for a multifamily building, an applicant may create converted units in non-livable space *or* build new construction detached units, but not both. However, the most recent HCD ADU handbook states on page 20 that “local governments must allow” the combination of such unit types. Therefore, the City must delete this section.
- Sections 9-1-35.26 (d)(3)(b)(2) – *New Construction ADUs on Multifamily Lots* – The Ordinance limits or appears to limit new construction ADUs to single-family dwellings and does not contemplate or authorize ADUs within a proposed or new construction multifamily dwelling, only with “existing multi-family” dwellings. This conflicts with Government Code section 65852.2, subdivision (a)(1)(D)(iii), which allows an ADU to be created with a “proposed or existing primary dwelling structure.” The “primary dwelling structure” refers to both a single-family and a multifamily dwelling. Therefore, the City must expand the definitions to account for the omission.
- Section 9-1-35.26 (d)(3)(b)(3) – *Number of Units Allowed in Multifamily Zoning Districts* – The Ordinance states that an applicant for a building permit may seek ADUs under subparagraph (1) [units created in converted non-livable space] or subparagraph (2) [“no more than two (2) detached”] but not under both (1) and (2). However, pursuant to Government Code section 65852.2, subdivisions (e)(1)(C) and (D), the City must allow ADUs under (1) and (2) together.
- Section 9-1-35.26 (d)(8) – *Parking Requirements* – The Ordinance includes parking mandates in excess of those permitted in State ADU Law. The Ordinance excepts additional parking space requirements for converted ADUs,

ADUs within a half-mile walk to public transit, and when a garage is demolished; however, the Ordinance omits three more required exceptions as noted in Government Code section 65852.2, subdivision (d). These are related to historic sites (Gov. Code, § 65852.2, subd. (d)(2)), on-street parking permits (Gov. Code, § 65852.2, subd. (d)(4)), and car shares (Gov. Code, § 65852.2, subd. (d)(5)). The City must add these sections to comply with State ADU Law.

- Section 9-1-35.26 (d)(12)(b) – *Local Standards* – The Ordinance states that for conversions of “Existing Space in a Single-Family Dwelling,” a “legally constructed space within an existing single-family home that does not meet the minimum setbacks requirements of Subsection (6) may be converted to an ADU, subject to the approval of a building permit and compliance with this section.” This appears to contain a typographical error in that it references setback requirements in “Subdivision (6)” rather than “Subdivision (4),” where setback standards are contained.
- Section 9-1-35.26 (d)(15)(a) – *Areas Designated for ADUs* – The Ordinance states that ADUs shall not be allowed where “roadways, public utilities or services” are inadequate. However, Government Code section 65852.2, subdivision (a)(1)(A), states “the designation of areas [where ADUs are permitted] may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.” The City has not, by Ordinance, designated the areas where ADUs are not allowed. Any designation of an area where ADUs are not permitted may not be made on an ad-hoc basis, but rather must be designated and supported by the City’s findings. “Roadways, public utilities or public services” are not a basis in statute for the designation of areas that restrict ADUs. Lastly, ADUs built under Government Code section 65852.2, subdivision (e), are not subject to local development standards or location constraints. The City must either remove Section 9-1-35.26 (d)(15)(a) or provide a designation supported by findings.
- Section 9-1-35.26 (d)(17) – *Separate Sale* – The Ordinance states that “No ADU shall be created for sale or financing pursuant to any condominium plan, community apartment plan, housing cooperative or subdivision map.” However, the building or development of an ADU for separate sale from the primary dwelling unit is permissible pursuant to Government Code section 65852.26, subdivision (a)(1). The section creates a narrow exception to allow separate conveyance with the involvement of qualified nonprofit housing organizations. The Ordinance should be modified to allow for the development and separate conveyance of ADUs meeting the requirements of this subdivision.
- Section 9-1-35.27(c)(4) and 9-1-35.27(c)(5)(b) – *Attached Garage* – The Ordinance states that “a JADU must be contained within the habitable walls of an existing or proposed single-family dwelling.” The term “habitable walls” may

conflict with state statute. Under Government Code section 65852.22, subdivision (a)(4), JADUs are permitted “within the walls of the proposed or existing single-family residence.” A single-family residence includes an attached garage as stated in the ADU Handbook of July 2022 on page 24. Moreover, Senate Bill 897, which will become effective January 1, 2023, specifies that enclosed uses, such as attached garages, are considered part of the proposed or existing single-family residence. The City should add language to clarify this point.

- Section 9-1-142 – *Definition of Terms* – The Ordinance defines “Efficiency Unit” as a dwelling which has a minimum floor area of 220 square feet. However, Government Code section 65852.2, subdivision (c)(2)(A), allows for the creation of efficiency units. Government Code section 65852.2, subdivision (j)(3), defines efficiency units as having the same meaning as section 17958.1 of the Health and Safety Code, which provides “a minimum floor area of 150 square feet....” The City must change the minimum floor area to comply with State ADU Law.

In response to the findings in this letter, and pursuant to Government Code section 65852.2, subdivision (h)(2)(B), the City must either amend the Ordinance to comply with State ADU Law or adopt the Ordinance without changes. Should the City choose to adopt the Ordinance without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinance complies with State ADU Law despite the findings made by HCD. Accordingly, the City’s response should provide a plan and timeline to bring the Ordinance into compliance.

Please note that, pursuant to Government Code section 65852.2, subdivision (h)(3)(A), if the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD may notify the City and the California Office of the Attorney General that the City is in violation of State ADU Law.

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 feel free to contact Mike Van Gorder, of our staff, at (916) 776-7541 or at [mike.vangorder@hcd.ca.gov](mailto:mike.vangorder@hcd.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a stylized flourish extending to the right.

David Zisser  
Assistant Deputy Director  
Local Government Relations and Accountability