

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

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August 14, 2024

John Guertin, City Manager
City of Del Rey Oaks
650 Canyon Del Rey Blvd.
Del Rey Oaks, CA 93940

Dear John Guertin:

**RE: Review of City of Del Rey Oak's Accessory Dwelling Unit (ADU) Ordinance
under State ADU Law (Gov. Code, §§ 66310 – 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 re-numbered (Enclosure 1).

Thank you for submitting the City Del Rey Oak's (City) ADU Ordinance No. 308 (Ordinance), adopted October 26, 2021, 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 September 13, 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. Sections 17.70.020, 17.70.40(A) 17.70.050 (B)(3) - *Definitions & General JADU Requirements* - The Ordinance defines a Junior Accessory Dwelling Unit (JADU) as, "a unit...contained entirely within a single-family residence..." However, this definition omits reference to the conditions required in Government Code 66333, subdivision (d): "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.” The City must amend the Ordinance to note the allowance.

Additionally, Government Code section 66333, subdivision (e) states, “If a permitted junior accessory dwelling unit does not include a separate bathroom, the permitted junior accessory dwelling unit shall include a separate entrance from the main entrance to the structure, with an interior entry to the main living area.” This requirement does not appear in the Ordinance, which must be amended accordingly.

3. Section 17.70.030 - *Denial* - The Ordinance states that the City shall “approve or deny [an] application within 60 days of receipt of the application...” However, there is no reference to the requirements stated in Government Code section 66317, subdivision (b): “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 accordingly.
4. Section 17.70.40(B) - *General ADU and JADU Requirements* - The Ordinance states that, “ADUs and JADUs may not be sold separately from the primary dwelling.” However, Government Code section 66341 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 nonprofit corporation, among other things. The City must amend the Ordinance to comply with State ADU Law.
5. Section 17.70.040 (C) - *JADU Terms* - The Ordinance states, “ADUs and JADUs shall not be rented for a period of less than thirty (30) days.” However, Government Code section 66333 does not require rental term minimums for JADUs and therefore such a requirement would be inconsistent with State JADU Law. The City must amend the Ordinance accordingly.
6. Section 17.70.050 (A)(1) - *Design Standards* - The Ordinance states, “ADUs are subject to the same requirements that apply to primary dwellings on the same lot in the applicable zoning district except as specified in this section.” However, Government Code section 66315 states, “Section 66314 establishes the maximum standards that a local agency shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer.”

Additionally, Government Code section 66321, subdivision (b)(3) 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."

Lastly, local development standards may not preclude the development of any unit subject to Government Code section 66323. The City must amend the Ordinance to note these exceptions.

7. Section 17.70.050 (C) (1) and (2) - *Height* - The Ordinance states, "1. A single-story attached or detached ADU may not exceed 16 feet in height above grade, measured to the peak of the structure." and "2. A second story or two-story attached ADU addition may be permitted subject to an architectural permit and may not exceed the height of the zoning district. The minimum allowed height shall be 16 feet." However, Government Code section 66321, subdivision (b)(4) states that "Notwithstanding subdivision (a), a local agency shall not establish by ordinance any of the following...(4) Any height limitation that does not allow at least the following, as applicable..." The applicable height limits are 16, 18, 20 or 25 feet. Therefore, the City must amend the minimum height requirements in the Ordinance to comply with State ADU Law. Additionally, the City should align height measurement with the definitions stated in the California Building Code.
8. Section 17.70.050 (C)(2) - *Architectural Permit* - The Ordinance states, "A second story or two-story attached ADU addition may be permitted subject to an architectural permit..." However, pursuant to Government Code section 65852.2, subdivision (a)(3)(A), "A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits." The Ordinance should only require ministerial provisions for the approval of accessory dwelling units. The City must amend their Ordinance to comply with State ADU Law.
9. Section 17.70.50 (F)(6) - *Parking* - The Ordinance states that, "No on-site parking is required for an ADU in the following cases..." It then describes conditions that match Government Code section 66322, subdivision (a)(1) through (a)(4) but omits reference to the conditions of (a)(5) and (a)(6). Therefore, the City must amend the Ordinance to add the additional parking exceptions.

10. Section 17.70.50 (G)(2) - *Sprinklers* - The Ordinance states, “The installation of fire sprinklers shall not be required in an ADU if sprinklers are not required for the primary residence.” However, Government Code sections 66314, subdivision (d)(12) and 66323, subdivision (c) expand on this to require that “The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.” Therefore, the City must amend the Ordinance to note the allowance.

Please note that the City has two options in response to this letter¹. The City can either amend the Ordinance to comply with State ADU Law² 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 findings³. 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 Law⁴.

HCD appreciates the City of Del Rey Oaks’ 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 at mike.vangorder@hcd.ca.gov if you have any questions.

Sincerely,



Jamie Candelaria
Senior Housing Accountability Unit Manager
Housing Policy Development Division

¹ Gov. Code, § 66326, subd. (c)(1).

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

³ Gov. Code, § 66326, subd. (b)(2)(B).

⁴ Gov. Code, § 66326, subd. (c)(1).

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)