

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

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January 7, 2025

Stephanie Frady, Director  
Community Development Department  
City of Irvine  
1 Civic Center Plaza  
Irvine, CA 92606

Dear Stephanie Frady:

**RE: Review of Irvine's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, §§ 66310 - 66342)**

Thank you for submitting the City of Irvine (City) ADU Ordinance No. 18-05 (Ordinance), adopted 04/24/2018, 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 fails to comply with State ADU and junior accessory dwelling unit (JADU) Laws in the manner noted below. Pursuant to Government Code 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 February 7, 2025.

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

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. *Mandatory Requirements* – The Ordinance does not accommodate the provisions of Government Code section 66323, subdivision (a), which 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...(i) 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 “One 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 means 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. This subdivision applies equally to ADUs created pursuant to Government Code section 66323, subdivision (a), subparagraphs (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 granted under Government Code section 66323. Therefore, the City must revise the Ordinance to allow for all of these unit mixes.

3. Section 1-2-1 – *Definitions* – The Ordinance states, “Garages on a single-family detached lot may have incidental uses above the garage area.” However, Government Code section 66321, subdivision (b)(4) states “...a local agency shall not establish by ordinance any of the following: Any height limitation that does not allow... 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. This subparagraph shall not require a local agency to allow an accessory dwelling unit to exceed two stories.” An ADU may exist entirely on the second story of an attached accessory structure, without restriction on the facilities for living, sleeping, eating, cooking, and sanitation. Therefore, the City must amend the ordinance to remove this unlawful restriction.

Additionally, the ordinance defines “accessory dwelling unit” as “An attached or detached residential dwelling unit on a lot zoned for residential use which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking (i.e., kitchen), and sanitation facilities on the same lot as the single-family dwelling unit is situated. An accessory dwelling unit also includes an efficiency unit, as defined in California Building Code Section 1208.4, and a manufactured home, as defined in Section 18007 of the Health and Safety Code... An accessory dwelling unit may take three forms:

- (1) An attached accessory dwelling unit is attached to the principal dwelling unit, having at least one (1) common wall or a common roof with the principal dwelling unit; or

(2) A detached accessory dwelling unit is detached from the principal dwelling unit; or

(3) A repurposed existing space within the principal dwelling unit that is converted into an independent living unit.”

However, Government Code section 66313, subdivision (a) defines “accessory dwelling unit” as “an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(1) An efficiency unit.

(2) A manufactured home, as defined in Section 18007 of the Health and Safety Code.”

Furthermore, Government Code section 66314, subdivisions (d)(2) and (d)(3) state, “A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all the following:

(d) Require the accessory dwelling units to comply with all the following:

(2) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(3) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages.”

State ADU Law allows for ADUs to be constructed on lots with existing or proposed single-family or multifamily dwelling units, and may be attached to, or detached from the existing or proposed primary dwelling, as well as within the existing space of either the primary dwelling or an accessory structure on the lot. Therefore, the City must delete the unlawful and misleading provisions and include in its definition of accessory dwelling unit all legally mandated units.

4. Sections 3-26-3, 3-26-5 1., and 3-26-5 3.a – *Residential Zoning* – The Ordinance states, “The provisions of this Section apply to all lots that are occupied with a proposed or existing single-family dwelling unit and zoned for single-family or multifamily residential use...” and “The lot on which the accessory dwelling unit is proposed to be established shall contain one proposed or existing permanent single-family dwelling...” However, Government Code section 66314 states “A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas

zoned to allow single-family or multifamily dwelling residential use.” ADUs are able to be constructed in any area zoned for single-family or multifamily use, with both single-family or multifamily primary dwellings. Therefore, the City must amend these sections to allow for multifamily ADUs.

5. Sections 3-26-4 3., 3-26-5, 3-26-7 1.a, and 3-26-7 4. – *Zoning Standards* – The Ordinance states, “The applicant of the building permit application shall be an owner-occupant...” and “...an accessory dwelling unit shall conform to all requirements of the underlying residential zoning district, any applicable overlay district, and all other applicable provisions of this Zoning Ordinance...” as well as “...no existing residential second unit ("granny unit" or "in-law unit"), guest house, servant's quarters or similar facility, unless the proposal includes demolition or modification of such facility so as to comply with the provisions of this Chapter.”

Additionally, the Ordinance imposes deed restrictions on all ADUs prior to the issuance of a building permit. 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.” Owner-occupancy requirements, deed restrictions, and other zoning or overlay district requirements are prohibited on ADUs created on a lot with an existing or proposed single-family dwelling. Therefore, the City must remove these requirements.

6. Section 3-26-4 – *Review Timelines* – The Ordinance states, “The Director shall approve or disapprove a building permit for an accessory dwelling unit within 120 days after receiving the complete application.” 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.” The City’s 120-day review timeline exceeds this 60-day maximum, and mistakenly uses outdated State ADU Law. Therefore, the City must amend this section to reflect a review timeline no longer than 60 days.

7. Sections 3-26-5 3.b, 3-26-5 5.b.i, 3-26-5 9., 3-26-5 10., and 3-26-7 2. – *Nonconforming Zoning Conditions* – The Ordinance states, “...the required minimum number and type of parking space(s) shall be brought into conformance at the time of building permit application review for the accessory dwelling unit...” in addition to “No additional setback shall be required for a legally established existing garage that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, provided that the side and rear setbacks comply with required Building Codes...” and “the portion of the single-family detached dwelling

unit or accessory structure must have been legally permitted (i.e., final field inspections successfully completed) and existing for a minimum of three (3) years prior to the issuance of a permit to convert the space into an accessory dwelling unit..." and finally "Conversion of any existing legal residential second unit ("granny unit" or "in-law unit") , accessory living quarters, guest house, servant's quarters or similar facility into an accessory dwelling unit shall require that the unit meet the provisions of this Chapter."

However, Government Code section 66322, subdivision (b) states "The local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit." Requiring existing structures on a lot to comply with zoning standards such as parking spaces, legal permits, or a set amount of time since construction is not compliant with State ADU Law. Therefore, the City must remove these requirements.

8. Sections 3-26-5 4., 3-26-5 6.d.ii, and 3-26-5 7. – *Objective Standards* – The Ordinance states, "A minimum lot or parcel size of five thousand (5,000) square feet, shall be required in order to establish an attached or detached accessory dwelling unit..." and includes a table which establishes maximum ADU sizes based upon lot size. In addition to that, section 3-26-5, item 7 includes several subjective standards as development criteria, such as:

- b. The design, color, material, pitch, and texture of the roof shall be substantially the same as the principal dwelling unit;
- c. The color, material and texture of all building walls, window types, and door and window trims shall be similar to, and compatible with, the principal dwelling unit;
- d. The architectural style of the accessory dwelling unit shall be the same or similar to the principal dwelling unit, or, if no architectural style can be identified, the design of the accessory dwelling unit shall be architecturally compatible with the principal dwelling unit, and shall maintain the scale and appearance of a single-family dwelling and is in harmony with the neighborhood;
- e. If the accessory dwelling unit is constructed above the principal dwelling unit or garage, all windows and doors shall be designed to minimize the privacy impacts onto the adjacent properties...
- f. When a garage, carport, or covered parking structure that is visible from any public right-of-way is converted or demolished in conjunction with the construction of an accessory dwelling unit, the design shall incorporate features to match the scale, materials and landscaping of the original house that preserve the existing streetscape and character of the surrounding neighborhood...

h. Enhanced landscaping and strategically located open space shall be provided to ensure privacy and screening of adjacent properties...”

Government Code section 66314, subdivision (b)(1) states, “A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall... Impose objective standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. These standards shall not include requirements on minimum lot size.” Specifying minimum lot sizes or using standards such as “compatible with, harmony with, or preserving the character of the neighborhood” are subjective standards that do not comply with State ADU Law. Therefore, the City must remove these standards.

9. Sections 3-26-5 5., 3-26-5 6.e. – *Setbacks* – The Ordinance states, “Unless further noted below, accessory dwelling units shall comply with the setback requirements applicable to the zoning district in which they are located.

- a. Detached Accessory Dwelling Unit.

- i. A detached accessory dwelling unit shall have a minimum building-to-building separation consistent with the underlying residential zoning district or Building Code, whichever is more restrictive between the principal dwelling unit and the detached accessory dwelling unit.

- ii. A detached accessory dwelling unit shall be located no closer to the front property line than the front-most building wall of the principal dwelling unit... A minimum setback of five feet from the side and rear property lines shall be required for an accessory dwelling unit that is constructed above a legally established existing garage...”

Government Code section 66314, subdivision (d)(7) states, “No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.” Requiring greater than four-foot side and rear setbacks does not comply with State ADU Law. Accordingly, the Ordinance must be amended to reflect State law.

Additionally, the Ordinance states, “An accessory dwelling unit constructed above a garage shall not extend outside the footprint of the existing garage. All setbacks shall also comply with all applicable Building Code requirements, whichever is more restrictive...” and “An accessory dwelling unit constructed above a new ground-level garage shall not extend outside the footprint of the garage.” However, Government

Code Section 66321, subdivision (b)(3) states, “a local agency shall not establish by ordinance any of the following... 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.” Imposing any setbacks or limits on lot coverage on ADUs under 800 square feet would be a violation of State ADU Law. Therefore, the City must remove all setback requirements in excess of four feet in the side and rear, as well as any setback requirements which would prevent an 800 square foot ADU from being constructed.

10. Sections 3-26-5 5.a.i and 3-26-5 6.c. – *Local Building Standards* – The Ordinance states, “A detached accessory dwelling unit shall have a minimum building-to-building separation consistent with the underlying residential zoning district or Building Code...” However, Government Code section 66314, subdivision (d)(8) states, “The ordinance shall... Require the accessory dwelling units to comply with... Local building code requirements that apply to detached dwellings, except that the construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code (Title 24 of the California Code of Regulations)...” Requiring building separations in excess of those within the local building codes is not compliant with State ADU Law.

11. Additionally, the Ordinance states, “Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.” While this is true, Government Code section 66314, subdivision (d)(12) further states, “The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.” Without this exemption, fire sprinklers could be required in the primary dwelling as a result of a proposed ADU, in violation of State ADU Law. Therefore, the City must add the specific exemption of fire sprinklers not being required in the primary dwelling when an ADU is constructed. Section 3-26-5 6.d.2 – *ADU Size* – The Ordinance states, “The maximum total floor space area of an attached or detached accessory dwelling unit is limited to no more than 50 percent of the livable floor area (excludes garage and any accessory structure) of the proposed or existing principal dwelling unit or the following table, whichever is less...” followed by a table which establishes maximum ADU sizes based upon lot size. Government Code section 66314, subdivisions (d)(4) and (d)(5) state:

“(4) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(5) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.”

Additionally, Government Code section 66321, subdivision (b)(3) states, "A local agency shall not establish by ordinance any of the following... 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."

Restricting attached ADUs to less than 800 square feet, or 50 percent of the primary dwelling, whichever is less is in violation of State ADU Law. Restricting detached ADUs to smaller than 1,200 square feet is also in violation of State ADU Law. Therefore, the City must amend the ordinance to allow for ADUs to be constructed in compliance with Government Code section 66314, subdivisions (d)(4) and (d)(5), as well as Government Code section 66321, subdivision (b)(3).

12. Section 3-26-5 6.f. – *ADU Height* – The Ordinance states, "Detached accessory dwelling units shall not exceed one - story and a height of 15.5 feet or the height of the principal dwelling unit, whichever is less, unless the accessory dwelling unit is constructed above an existing or new garage or is attached to the principal dwelling unit, in which case the structure shall comply with the height limits of the underlying zoning district." However, Government Code section 66321, subdivision (b)(4) states, "A local agency shall not establish by ordinance... Any height limitation that does not allow at least the following, as applicable:

(A) A height of 16 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit.

(B) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. A local agency shall also allow 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.

(C) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.

(D) 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. This subparagraph shall not require a local agency to allow an accessory dwelling unit to exceed two stories."

Restricting ADUs to 15.5 feet or the height of the primary dwelling is a violation of State ADU Law. Therefore, the City must amend this section to allow for the ADU height specified in Government Code section 66321, subdivision (b)(4).

13. Sections 3-26-6 1.e., and 3-26-6 1.f. – *Parking* – The Ordinance states, “No parking shall be required for...” and lists five exemptions, mirroring Government Code section 66322, subdivision (a)(1) through (a)(5). While this is correct, Government Code section 66322, subdivision (a)(6) further states, “Notwithstanding any other law, and whether or not the local agency has adopted an ordinance governing accessory dwelling units.... A local agency shall not impose any parking standards for an accessory dwelling unit.... When a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit or the parcel satisfies any other criteria listed in this subdivision.” This parking exemption must be added to the Ordinance for compliance with State ADU Law.

Additionally, the Ordinance 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 spaces must be provided on-site” However, Government Code section 66314, subdivision (d)(11) states, “When a garage, carport, covered parking structure, or uncovered parking space is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.” Requiring the offstreet parking to be replaced when a garage, carport, or covered parking structure is converted into an ADU is in direct violation of State ADU Law. The City must amend this section to include this additional parking exemption of Government Code section 66322, subdivision (a) and remove the unlawful parking replacement requirements for conversion ADUs.

14. Section 3-26-7 1.b. – *Separate Conveyance* – The Ordinance states, “Sale or ownership of an accessory dwelling unit separate from the main dwelling unit is prohibited...” 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. Therefore, the City must amend this section to include this specific allowance of separate conveyance.

The City has two options in response to this letter.<sup>1</sup> The City can either amend the Ordinance to comply with State ADU Law<sup>2</sup> 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 findings.<sup>3</sup> 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 Law.<sup>4</sup>

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<sup>1</sup> Gov. Code, § 66326, subd. (c)(1).

<sup>2</sup> Gov. Code, § 66326, subd. (b)(2)(A).

<sup>3</sup> Gov. Code, § 66326, subd. (b)(2)(B).

<sup>4</sup> Gov. Code, § 66326, subd. (c)(1).

Stephanie Frady, Director  
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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 Tyler Galli at [Tyler.Galli@hcd.ca.gov](mailto:Tyler.Galli@hcd.ca.gov) if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Jamie Candelaria".

Jamie Candelaria  
Senior Housing Accountability Manager  
Housing Policy Development Division

Enclosures

**State ADU/JADU Law Statutory Conversion Table**

<b>New Government Code Sections</b>	<b>Previous Government Code Sections</b>
<b>Article 1. General Provisions</b>	
66310	65852.150 (a)
66311	65852.150 (b)
66312	65852.150 (c)
66313	General Definition Section 65852.2 (j) 65852.22 (j)
<b>Article 2. Accessory Dwelling Unit Approvals</b>	
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.
<b>Article 3. Junior Accessory Dwelling Units</b>	
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)
<b>Article 4. Accessory Dwelling Unit Sales</b>	
66340	65852.26 (b)
66341	65852.26 (a)
66342	65852.2 (a)(10)