

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

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March 27, 2025

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

Dear Stephanie Frady:

**RE: City of Irvine Accessory Dwelling Unit (ADU) Ordinance – Letter of Technical Assistance**

The California Department of Housing and Community Development (HCD) issued a review of the City of Irvine's (City) ADU Ordinance No.18-05 (Ordinance) on January 7, 2025. HCD is aware that the City has not amended Ordinance No. 18-05 and that instead of amending, they intend to use State ADU Law. However, the City has misapplied State ADU Law in the processing of ADU applications by requiring deed restrictions and disallowing JADUs in townhomes. Additionally, the City has failed to either adopt an amended ordinance that complies with State ADU Law or adopt the Ordinance without changes and with a resolution that includes findings explaining why the City believes the Ordinance complies with the law as required by Government Code section 66326, subdivision (b)(2).

**Background**

HCD received a complaint stating that the City was requiring a deed restriction to prohibit a separate sale of the ADU as part of a complete application for an ADU, and that without such a deed restriction the application would not be accepted. HCD provided technical assistance, citing Government Code section 66315, which states, "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." A deed restriction is an "additional standard" and thus cannot be imposed.

On January 7, 2025, HCD sent the City findings resulting from its review of Ordinance No. 18-05. Finding number 5 addressed this issue and made a citation to section 66315, quoted above. The City responded on February 6, 2025, with a letter stating, "As confirmed by the City's Chief of Planning and Policy via email to HCD staff on December 2, 2024 (please refer to enclosure), the City is not enforcing Ordinance 18-05

and has not enforced Ordinance 18-05 since January 1, 2020. The City acknowledges that Ordinance No. 18-05 is null and void and is superseded by State Law. (Gov. Code § 66325) At present, the City has no intention of formally repealing or amending Ordinance No. 18-05 and intends to continue to apply the provisions of State Law to ADU and JADU applications without regard to any provisions of Ordinance No. 18-05.”

On February 14, 2025, HCD emailed City staff inquiring about an application submitted for 14792 Waverly Lane. The applicant was told she must submit a deed restriction before the City would approve her ADU application. The City has not replied to HCD.

On February 18, 2025, City staff emailed the applicant, citing Government Code section 66315 and stating:

“The covenant does not impose additional restrictions on maximum development standards as noted above and is not in conflict with any state or local laws. Pursuant to Section 65852.2(a)(10), the City has not adopted a separate ordinance to allow the separate conveyance of the primary dwelling unit and ADU. Therefore, pursuant to state ADU laws, the City is within our rights to restrict the separate sale of ADUs. Irvine Zoning Ordinance Section 1-2-1 defines housing less than 31 consecutive days as a boarding house, which is subject to additional City regulation... the ADU application remains incomplete with outstanding items to be addressed. While State law provides for a 60-day shot clock for processing ADUs, that clock stops when the City provides plan check comments and restarts when the applicant resubmits. The City will continue to comply with State law regarding the plan check review, and requests that you provide the required covenant to continue with your plan check review.”

On February 14, 2025, HCD received another complaint regarding a JADU application for 112 Chantilly. It is the City’s position that the detached single-family home, located on its own lot, is part of a multifamily primary dwelling and would therefore be ineligible for a JADU. This was the subject of a protracted conversation HCD had with the City beginning in September 2022 wherein the City argued that a townhouse was a multifamily primary dwelling and therefore ineligible for an attached new construction ADU. City staff verbally indicated that they disagreed with HCD’s technical assistance; HCD was preparing a letter on the topic when the complainant chose to abandon their application. In both cases, a townhouse’s format was the basis of the City’s denial of, or refusal to accept, an application.

## **Analysis**

The City claims that it is not enforcing Ordinance No. 18-05. However, the City continues to enforce requirements that HCD’s technical assistance and ADU Ordinance Findings Letter have both found to be inconsistent with State ADU Law, as addressed below.

### ***Deed Restriction***

The City's position on deed restrictions is erroneous. It claims that such a deed restriction requires only development standards that appear in Government Code section 66314 and that therefore it does not conflict with section 66315. However, a deed restriction *is* an additional standard that is not addressed in section 66315. That section's phrase, "including an owner-occupant requirement," clarifies that additional standards need not be specifically related to development to be prohibited under section 66315. Given that the City uses this as grounds to delay an application under the premise that the application is "incomplete," this requirement is also inconsistent with section 66317, subdivision (c): "No local ordinance, policy, or regulation, other than an accessory dwelling unit ordinance consistent with this article shall be the basis for the delay or denial of a building permit or a use permit under this section."

### ***JADU in a Detached Townhouse on a Single-Family Lot***

The City is also incorrect about JADUs on lots with "townhouses," a term of art that does not appear in State ADU Law. Government Code section 66333, subdivision (a) describes a limitation of one JADU "per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot." While inclusion in an HOA or other elements might establish the primary dwelling as part of a planned community or "townhouse complex," a detached townhouse on its own lot is a single-family primary dwelling and would therefore be eligible for a JADU.

### ***Local ADU Ordinance***

Government Code section 66326, subdivision (b)(2) requires local jurisdictions to either "(A) Amend the ordinance to comply with this article; [or] (B) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this article despite the findings of the department." In addition, section 66326, subdivision (c)(1) states, "If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this article and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law." The City has taken neither step required by State ADU Law.

## Conclusion and Next Steps

The City has consistently dismissed HCD's technical assistance as a disagreement over interpretation, and the City's misapplication of state law has resulted in the ongoing complaints regarding issues raised in previous technical assistance provided by email and the ADU Ordinance Findings Letter issued by HCD. HCD urges the City to take steps to remedy the issues identified in this letter and, as a best practice and to promote clarity, to repeal Ordinance No. 18-05.

Please be advised that HCD has enforcement authority over State ADU Law.<sup>1</sup> Accordingly, HCD may review local government actions and inactions to determine consistency with State ADU Law. If HCD finds that a city's actions do not comply with State ADU Law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law.<sup>2</sup> HCD requests that the City respond by April 28, 2025 with a plan and timeline to address the issues identified in this letter. If you have any questions or would like to discuss the contents of this letter, please contact Mike Van Gorder 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 long horizontal stroke extending to the right.

David Zisser  
Assistant Deputy Director  
Local Government Relations and Accountability

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<sup>1</sup> Gov. Code, §§ 65585, subd. (j)(15); 66326.

<sup>2</sup> Gov. Code, §§ 65585, subd. (j); 66326, subd. (c)(1).