

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

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August 22, 2024

Jonathan Orduna, Community Development Director
Planning and Zoning
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
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 of Laguna Niguel (City) ADU Ordinance No. 2023-223 (Ordinance), adopted June 20, 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 September 21, 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 9-1-35.26 (d)(1) – *Mixed Use Conversion* – The Ordinance states, “Nothing in this section shall allow for the conversion of commercial or non-residential space in a mixed-use building.” However, Government Code section 66323, subdivision (a)(2), permits conversion in “...portions of existing multifamily

dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.” Where an existing multifamily dwelling structure contains a mix of uses such as common spaces shared by the tenants of the structure, those portions within the structure that are not used as livable space are eligible for conversion to ADUs under subdivision (a)(3). Therefore, the City must amend the Ordinance to allow the conversion of portions of existing multifamily dwelling structures that are not used as livable space.

3. Section 9-1-35.26 (d)(3)(a) – *Unit Allowance* – The Ordinance states, “In single-family residential zoning districts, an applicant shall be allowed to construct one (1) detached or attached ADU per lot, or convert existing space into one (1) ADU. In addition to the one (1) ADU allowed in this Section, an applicant may also construct one (1) Junior Accessory Dwelling Unit (JADU) so long as it complies with Section 9-1-35.27.” This language limits developable ADUs to one per single-family lot, regardless of format.

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.” Paragraph (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 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. Therefore, the City must amend the Ordinance to provide for all ADU combinations described in Government Code section 66323.

4. Section 9-1-35.26 (d)(8) – *Parking Exceptions* – The Ordinance provides four conditions under which no parking may be required, and these conditions match those of Government Code section 66322, subdivisions (a)(1), (a)(3), (a)(4), and (a)(5). However, the Ordinance does not exempt parking requirements under the condition of subdivision (a)(6): “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 paragraph.” Therefore, the City must amend the Ordinance to comply with State ADU Law regarding parking standards.

5. Section 9-1-35.26 (d)(14) – *Deed Restriction* – The Ordinance states, “Prior to the issuance of a Certificate of Occupancy for the ADU, the property owner shall record a deed restriction prepared by the City on the subject lot...” However, a deed restriction cannot be imposed on an ADU. 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, except that a local agency may require that the property may be used for rentals of terms 30 days or longer.” A deed restriction would be an “additional standard” and thus cannot be imposed. The City must remove this provision from the Ordinance.
6. Section 9-1-35.26 (d)(18) – *Owner Occupancy* – The Ordinance states, “Occupancy. For any ADU permitted before January 1, 2025, ADUs may be rented or owner occupied and there shall not be a requirement that any unit on the lot be owner-occupied. For an ADU permitted after January 1, 2025, however, either the primary dwelling or the ADU shall be owner occupied, unless State law is amended to prohibit such a requirement.” 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...” The City must remove these occupancy restrictions from the Ordinance.
7. Section 9-1-35.27 (c)(2) and (c)(15) – *JADU Rental Terms* – The Ordinance states, “The JADU 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 remove this requirement from the Ordinance.
8. Section 9-1-35.27 (c)(5) – *Attached Garages* – The Ordinance states, “A JADU must be contained within the walls of an existing or proposed single-family dwelling.” However, Government Code section 66333, subdivision (d) requires “a permitted junior accessory dwelling unit to be constructed within the walls of the proposed or existing single-family residence. For purposes of this paragraph, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” Therefore, the City should amend the Ordinance to note that attached garages may be converted to JADUs.

9. Section 9-1-35.27 (c)(16) – *JADU Nonconformity* – The Ordinance states, “Any proposed JADU that does not conform to the objective standards set forth in subsections (1) through (15) of this section may be allowed by the City pursuant to Alternative Development Standards subject to approval of a Site Development Permit in compliance with the provisions of Section 9-1-114.” JADUs are defined in Government Code section 66313, subdivision (d) as “a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.” The City must reflect state law pertaining to JADUs and avoid confusing its constituents with inapplicable requirements that are inconsistent with state law.

The City has two options in response to this letter. The City can either amend the Ordinance to comply with State ADU Law 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. 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.

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 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 Unit Manager
Housing Policy Development Division

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)