

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

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August 9, 2024

Alex Othon, Senior Planner
Planning Department
City of Larkspur
400 Magnolia Ave
Larkspur, CA 94939

Dear Alex Othon:

RE: Review of Larkspur'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 Larkspur (City) ADU Ordinance No. 1066 (Ordinance), adopted July 19, 2023, to the California Department of Housing and Community Development (HCD) 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 9, 2024.

The Ordinance addresses many statutory requirements and in many ways is excellent; HCD appreciates the demonstrable care and thought that went into its composition. 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 reflect the correct code sections.
2. Sections 18.23.020 and 18.23.060 D – *JADU and Sanitation* – The Ordinance states, "A JADU... may share sanitation facilities with the existing structure." However, Government Code section 66333, subdivision (e)(2), requires that, "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.” Therefore, the City must amend the Ordinance to comply with State ADU Law.

3. 18.23.050 and 18.35.050 C – *Maximum Lot Coverage and Gross Floor Area* – The Ordinance states, “The maximum lot coverage shall be increased equivalent to the area in square feet, up to 800 square feet, of one Accessory Dwelling Unit (ADU) or Junior Accessory Dwelling Unit (JADU) constructed after July 1, 2023, that complies with requirements for ministerial approval under Section 18.23.070.” It later states, “The maximum gross floor area shall be increased equivalent to the area in square feet, up to 800 square feet, of one Accessory Dwelling Unit (ADU) or Junior Accessory Dwelling Unit (JADU) that complies with requirements for ministerial approval under Section 18.23.070.” However, restricting such increases to one ADU or JADU may restrict by-right combinations of ADUs required by State ADU Law per Government Code section 66323, subdivision (a). Such combinations are already expressly permitted in Section 18.23.060 A, so as a matter of internal consistency, the City must amend the Ordinance to allow all by-right ADUs to increase the maximum lot coverage.

Additionally, restricting all ADUs to 800 square feet through the application of lot coverage requirements is, in effect, applying a maximum size of 800 square feet. However, Government Code section 66321, subdivision (b)(2) prohibits, “A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following: (A) Eight hundred fifty square feet. (B) One thousand square feet for an accessory dwelling unit that provides more than one bedroom.” Therefore, the City must amend the Ordinance to comply with State ADU Law.

4. 18.23.050 B – *Denial Procedure* – The Ordinance states, “The Building Division or such future applicable department, shall approve or deny the application to create an accessory dwelling unit or junior accessory dwelling unit within sixty (60) days from the date of receipt of a properly completed application if there is an existing dwelling on the lot.” However, Government Code section 66317, subdivision (b) requires, “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.” Therefore, the City should amend the language to note the requirements entailed by a denial.
5. 18.23.060 L – *JADU Terms* – The Ordinance states, “Any rental of an ADU or JADU shall be for a term longer than thirty (30) days.” However, Government Code section 66333 does not provide rental term limits for JADUs and therefore such a requirement would be inconsistent with State JADU Law. The City must amend the Ordinance accordingly.

6. 18.23.060 Q – *Deed Restrictions* – The Ordinance states, “Prior to the issuance of a building permit for an ADU or JADU, a deed restriction, approved by the Community Development Director...shall be recorded with the Marin County Recorder’s office.”

However, Government Code section 66317, subdivision (c) states, “No local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this section,” and 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....” Section 66314 does not allow a deed restriction for a building permit for ADUs; therefore, this section of the Ordinance is not consistent with State ADU Law. The City may not condition approval of an ADU application on the recordation of a deed restriction. Therefore, the City must amend the Ordinance accordingly.

Please note that the City has two options in response to this letter.¹ 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 findings.³ 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.⁴

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 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)