

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

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May 20, 2025

Sergio Madera, City Planner  
Development Services Department  
City of Oceanside  
300 N. Coast Hwy  
Oceanside, CA 92054

Dear Sergio Madera:

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

Thank you for submitting the City of Oceanside ADU Ordinance No. 22-OR0114-1 (Ordinance), adopted February 23, 2022, to the California Department of Housing and Community Development (HCD). The Ordinance was received by HCD on April 30, 2024. 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 Law 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 June 19, 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 *Statutory Numbering* - The Ordinance contains several references to code sections that were repealed by SB 477, effective March 25, 2024.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 the Government Code, Title 7, Division 1, Chapter 13 (sections 66310-66342). The City must amend the Ordinance to refer to the correct Government Code sections.
2. Section 3006.A.2. – *JADU General Requirements* – The Ordinance states, "Owner-occupancy of either primary dwelling or JADU is required by state law." However, Government Code section 66333, subdivision (b), states, "Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization." The City must amend the Ordinance to account for these exceptions to requiring junior accessory dwelling unit (JADU) owner-occupancy.

3. Section 3006.B.2.f. – *Unit Combination* – The Ordinance limits the number of ADUs to “[o]nly one ADU or JADU . . . unless constructed as a JADU and ADU combination in accordance with Section 3006.B.4. The maximum number of ADUs on multifamily properties shall be as prescribed in Section 3006.B.5.” However, Government Code section 66323, subdivision (a), states “Notwithstanding Sections 66314 to 66322, inclusive, a local agency shall ministerially approve an application...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....” Additionally, Government Code section 66323, subdivision (a)(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” (i.e., “create any of the following”) followed by a list of permitted ADU types under Government Code section 66323, indicates that any of these ADU types can be combined on lots with existing or proposed single-family dwellings.

This permits a homeowner, who meets the specified requirements, to create one converted ADU; one detached, new construction ADU; and one JADU. ADU types can be combined on lots with existing or proposed single-family dwellings. This section applies equally to ADUs created pursuant to, subdivisions (a)(3) and (a)(4) on lots with proposed or existing multifamily dwellings. Limiting single-family lots to one ADU would prevent property owners from creating ADUs by right under Government Code section 66323, subdivision (a). Therefore, the City must amend the Ordinance to allow for all ADU combinations described in Government Code section 66323.

4. Section 3006.B.5.c. – *Maximum size and number of ADUs on a Multifamily lot* – The Ordinance states, “The construction of two detached ADUs with a maximum size of 850 square feet, or 1,000 square feet with more than one bedroom, shall be permitted...” However, Government Code section 66323, subdivision (a)(4)(A)(ii) and (iii), allows for the following: “(ii) On a lot with an existing multifamily dwelling, not more than eight detached accessory dwelling units. However, the number of accessory dwelling units allowable pursuant to this clause shall not exceed the number of existing units on the lot. (iii) On a lot with a proposed multifamily dwelling, not more than two detached accessory dwelling units.” Moreover, there is no floor size maximum imposed on detached ADUs on lots with existing or proposed ADUs.<sup>1</sup> The City restricts the size and number of detached ADUs beyond State ADU Law. Therefore, the City must remove the size restrictions and amend the Ordinance to reflect the correct maximum number of permissible ADUs.

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<sup>1</sup> Gov. Code, § 66323, subd. (b).

5. Section 3006.C. – *Permit Requirements* – The Ordinance states, “The City shall ministerially review and act on a building permit application for an ADU or JADU within 60 days after receiving the application.” However, Government Code section 66317, subdivision (a), requires the City, and all permitting agencies<sup>2</sup> to concurrently “either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling within 60 days from the date the permitting agency receives” the completed application.<sup>3</sup> Therefore, the City must amend the Ordinance to ensure it approves or denies applications for ADUs and JADUs, not only act on applications.
6. Section 3006.D.1.d. – *Height* – The Ordinance states, “An attached or detached ADU with a maximum size of 850 square-feet or 1,000 square-foot [sic] with more than one bedroom shall be permitted in any circumstance subject to a maximum height of 16 feet...” However, ADUs created under Government Code sections 66314 and 66323, are subject various height allowances in subparagraphs (A), (B), or (C) of paragraph (4) of subdivision (b) of Section 66321, as applicable. The City’s height restrictions, in some cases, do not allow for the appropriate height maximum required by State ADU Law. Therefore, the City must amend the Ordinance to account for the maximum heights allowable.
7. Section 3006.D.3.c. – *Front Setbacks* – The Ordinance states, “All ADUs shall meet the front yard setback.” However, ADUs constructed under Government Code section 66314 preclude front setbacks “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.”<sup>4</sup> Moreover, Government Code section 66323, subdivision (b), precludes “... any objective development or design standard that is not authorized by this section upon any accessory dwelling unit that meets the requirements of any of paragraphs (1) to (4), inclusive, of subdivision (a).” The City’s imposition of front setbacks is more restrictive than allowed by State ADU Law. Therefore, the City must amend the front setbacks provision in the Ordinance to account for the exceptions in State ADU Law.
8. Section 3006.D.4. – *Maximum Height and Lot Coverage* – The Ordinance states, “ADUs exceeding 850 square feet or 1,000 square feet with more than one bedroom, and/or a height of 16 feet tall shall comply with the height and maximum lot coverage of the underlying zoning district.” However, Government Code section 66323, subdivision (b), precludes all design and development standards not authorized by section 66323. The City’s lot coverage

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<sup>2</sup> Gov. Code, § 66313 subd. (k). “Permitting agency” means any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.

<sup>3</sup> Gov. Code, § 66317, subd. (a).

<sup>4</sup> Gov. Code, § 66321, subd. (b)(3).

requirements cannot be applied to ADUs and JADUs created under section 66323. Therefore, the City must amend the Ordinance to include or clarify this exception for 66323 units.

9. Section 3006.D.5.e. – *Off-street Parking* – The Ordinance states, “Required off-street parking shall be permitted in front, side, and rear setback areas...” and subjects such off-street parking to several conditions. However, State ADU Law provides: “Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.”<sup>5</sup> The Ordinance prohibits parking in certain setback areas without making findings that allowing such parking is not feasible based upon specific site or regional topographical or fire and life safety conditions. The City must amend the Ordinance to delete these conditions or adopt adequate findings to support the statutory requirements.
10. Section 3006.D.5.g. – *Parking Exemptions* – The Ordinance correctly lists several statewide parking exemptions for ADUs. However, Government Code section 66322, subdivision (a)(6), also requires parking exemptions, “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.” Therefore, the City must include all parking exemptions applicable to ADUs in the Ordinance.
11. Section 3006.D.5. – *Design* – The Ordinance might have an enumeration error, as it lists Section “D5” twice. Moreover, the second Section D5 states that “ADUs shall be architecturally compatible with the primary dwelling in terms of design, building and roofing materials, colors, and exterior finishes.” However, Government Code section 66314, subdivision (b)(1), allows local ordinances to impose only “objective standards on accessory dwelling units,” and section 66313, subdivision (i), states, “Objective standards’ means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” As there is no objective standard for “architecturally compatible”, the City must remove this language from the Ordinance.

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<sup>5</sup> Gov. Code, § 66314, subd. (d)(10)(B).

The City has two options in response to this letter.<sup>6</sup> The City can either amend the Ordinance to comply with State ADU Law<sup>7</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>8</sup> If the City fails to take either course of action to 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>9</sup>

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 Michael McLaughlin at [Michael.McLaughlin@hcd.ca.gov](mailto:Michael.McLaughlin@hcd.ca.gov) if you have any questions.

Sincerely,



Jamie Candelaria  
Senior Housing Accountability Manager  
Housing Policy Development Division

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<sup>6</sup> Gov. Code, § 66326, subd. (c)(1).

<sup>7</sup> Gov. Code, § 66326, subd. (b)(2)(A).

<sup>8</sup> Gov. Code, § 66326, subd. (b)(2)(B).

<sup>9</sup> Gov. Code, § 66326, subd. (c)(1).