

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

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October 11, 2024

Cheryl Kuta  
Development Services Director  
City of Rancho Santa Margarita  
22112 El Paseo  
Rancho Santa Margarita, CA 92688

Dear Cheryl Kuta:

**RE: Review of Rancho Santa Margarita'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 Rancho Santa Margarita (City) accessory dwelling unit (ADU) Ordinance No. 23-01 (Ordinance), adopted April 12, 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). Under that statute, 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 November 10, 2024.

The Ordinance addresses many statutory requirements; however, HCD finds that the Ordinance fails to 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. Section 9.04.190 (e)(3)a. – *Unit Allowance* – The Ordinance states, “For lots with a proposed or existing single-family dwelling, no more than one attached, converted or detached ADU and one JADU shall be permitted on the lot.” Subsequently, it states that for multifamily units, “On lots with no detached

ADU's, at least one ADU, and up to 25 percent of the number of the existing units may be constructed within portions of the existing multifamily dwelling structure that are not used as livable space (e.g., storage rooms, boiler rooms, passageways, attics, basements, or garages) provided all applicable building code standards are met; or... Not more than two detached ADUs shall be permitted on the lot." Government Code section 66323 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." Subparagraph (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 any of these ADU types can be combined on a lot zoned for single-family dwellings.

This permits and entitles 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 simultaneously applies to multifamily primary dwellings in that 'any' refers to both subdivisions (a)(3), which states "Multiple accessory dwelling units within the 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... A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units," and (a)(4), which allows "Not more than two accessory dwelling units that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling...."

Therefore, the City must amend the Ordinance to reflect state law and provide for all state mandated ADU combinations rather than imposing unlawful restrictions.

3. Section 9.04.190 (e)(3)a. – *Size Maximum* – The Ordinance states, "In cases where both a detached ADU and a JADU are developed or proposed on a lot, the total floor area of the detached ADU must be 800 square feet or less."

However, Government Code section 66321, subdivision (b)(3) prohibits “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.” Therefore, the existence of a JADU on a lot cannot restrict the size of an ADU that is subject to section 66321, subdivision (b)(3).

Furthermore, JADUs consistent with State JADU Law must be ministerially approved without reference to local development standards such as floor area restrictions per Government Code section 66323. Therefore, the City must remove this section.

4. Section 9.04.190 (e)(7) – *Parking Exceptions* – The Ordinance requires no parking space for conditions that match those described in Government Code section 66322, subdivisions (a)(1) through (a)(5). However, the Ordinance omits reference to the conditions described in 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 add the language above as an additional instance exempt from parking standards, consistent with State ADU Law.
5. Section 9.04.190 (f)(9)(d) and (g)(2) – *JADU Rental Terms* – The Ordinance states, “The JADU may be rented, but may not be rented on a short-term basis of less than 30 consecutive days.” However, Government Code section 66333 does not require rental term minimums for JADUs and therefore such a requirement would violate State JADU Law. The City must amend the Ordinance to remove this restriction.
6. Section 9.04.190 (f)(6) – *JADUs and Garages* – The Ordinance states, “...when an existing attached garage is converted to a JADU, any required off-street parking spaces for the primary dwelling that are eliminated as a result of the conversion shall be replaced. However, Government Code section 66334, subdivision (a) states, “A junior accessory dwelling unit ordinance adopted pursuant to Section 66333 shall not require additional parking as a condition to grant a permit.” Therefore, requiring replacement parking in the event of a garage conversion for a JADU is inconsistent with State ADU Law. The City must amend the Ordinance to remove this requirement.

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>

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 VanGorder at [Mike.Vangorder@hcd.ca.gov](mailto:Mike.Vangorder@hcd.ca.gov) if you have any questions.

Sincerely,



Jamie Candelaria  
Senior Housing Accountability Unit Manager  
Housing Policy Development Division

Enclosure

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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).

## State ADU/JADU Law Statutory Conversion Table

New Government Code Sections	Previous Government Code Sections
<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)