

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

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October 14, 2025

Adam Atamian, Community Development Director
Department of Community Development
City of San Clemente
910 Calle Negocio
San Clemente, CA 92673

Dear Adam Atamian:

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

Thank you for submitting the City of San Clemente (City) ADU Ordinance No. 1742 (Ordinance), adopted December 20, 2022, 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 fails to comply with State ADU Laws 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 November 13, 2025.

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 Government Code sections.
2. Section 17.28.270, subdivision (D)(1)(a) – *Unit Allowance* – The Ordinance allows for: “One ADU as described in this subsection D.1.a and one JADU on a lot with a proposed or existing single-family dwelling on it...”

However, 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 “one 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 a list of permitted ADU types indicates that any of these ADU types can be combined on a lot zoned for single-family dwellings.

This permits a homeowner 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 requirements of this section, the local agency cannot deny the application, nor deny a permit for a junior accessory dwelling unit (JADU) under this section. This section also requires the ministerial approval of detached ADUs in combination with units created in portions of multifamily primary dwellings that are not used as habitable space. Therefore, the City must amend the Ordinance to provide for all ADU combinations described in Government Code section 66323.

3. Section 17.28.270, subdivision (D)(1)(d) – *Multifamily Allowances* – The Ordinance allows “No more than two detached ADUs on a lot that has an existing or proposed multi-family dwelling...” However, State ADU Law requires allowances of up to eight detached ADUs for existing multifamily primary dwellings, not to exceed eight (8) or the number of existing primary units on the lot, whichever is fewer.¹ The City must amend the Ordinance to provide for up to eight units with existing multifamily primary dwellings.
4. Section 17.28.270, subdivision (E)(2)(a) - *ADU Height* – The Ordinance states that: “...a detached ADU created on a lot with an existing or proposed single family or multifamily dwelling unit may not exceed 16 feet in height.” However, under State ADU Law, detached ADUs on lots with multi-family, multi-story dwellings may reach 18 feet in height.² Additionally, detached ADUs on lots within one half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code, may reach 18 feet in height, along with an additional two feet to accommodate a roof pitch on the ADU that is aligned with the roof of the primary dwelling unit.³ Therefore, the City must amend its Ordinance to allow for these minimum height allotments for ADUs.
5. Section 17.28.270, subdivision (E)(7) – *Owner Occupancy* – The Ordinance creates requirements for owner occupancy for units built after January 1, 2025. However, the owner occupancy allowance that would have become permissible on January 1, 2025, was removed from State ADU Law with the adoption of AB 976 (Chapter 751, Statutes of 2023). Government Code section 66315 states “Section

¹ Gov. Code, § 66323, subd. (a)(4)(A)

² Gov. Code, § 66321, subd. (b)(4)(C)

³ Gov. Code, § 66321, subd. (b)(4)(B)

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, except that a local agency may require that the property may be used for rentals of terms 30 days or longer.” Therefore, the City must amend the Ordinance to remove references to owner occupancy.

6. Section 17.28.270, subdivision (E)(8) – *Deed Restrictions* – The Ordinance states, “Prior to issuance of a building permit for an ADU or JADU, a deed restriction must be recorded against the title of the property in the County Recorder's office and a copy filed with the Planning Division.” 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.” Although deed restrictions are required for JADUs, they are prohibited for ADUs. The City must amend the Ordinance to remove the deed requirement for an ADU.
7. Section 17.28.270, subdivision (F)(2)(c)(v) – *Parking Requirements* – The Ordinance states that parking shall not be required, “[w]hen there is a city-sanctioned, posted car-share pick-up or drop-off location within one block of the ADU.” However, State ADU Law prevents the imposition of parking standards “When there is a car share vehicle located within one block of the accessory dwelling unit.”⁴ Note that this provision does not include qualifiers such as “city-sanctioned” or “posted”. Therefore, the City must remove these qualifiers from its ordinance to align with State ADU Law.
8. Section 17.28.270, subdivision (F)(4)(c) – *Development Standards* – The Ordinance states, “Application of other development standards in this subsection F, such as lot coverage, might further limit the size of the ADU, but no application of the percent-based size limit in subsection F.4.b, a front setback, or lot coverage limit may require the ADU to be less than 800 square feet.”

Additionally, local jurisdictions may not impose “any other minimum or maximum size for an accessory dwelling unit based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, *floor area ratio*, *open space*, 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.”⁵ (Emphasis added.) Therefore, the City should amend the Ordinance to clarify which standards cannot be imposed on units that require an ADU permit under subsection D.2 of the City's Ordinance.

⁴ Gov. Code, § 66322, subd. (a)(5)

⁵ Gov. Code, § 66321, subd. (b)(3).

9. Section 17.28.270, subdivision (F)(7)(a); subdivision (F)(7)(f) – *Architecture Review* – The Ordinance states, “The materials and colors of the exterior walls, roof, and windows and doors must match the appearance and architectural design of those of the primary dwelling.” However, jurisdictions may only impose objective standards on ADUs 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.”⁶ Requirements to “match the appearance” and “match the...architectural design” do not conform to HCD’s definition of objective standards.⁷ Therefore, the City must amend its ordinance to only include objective standards for ADUs.
10. Section 17.28.270, subdivision (G)(2) – *Unpermitted Units* – The Ordinance provides a pathway to compliance for unpermitted units created prior to 2018. However, State ADU Law was amended on January 1, 2025, and requires a pathway to compliance for unpermitted units created prior to 2020.⁸ The City must amend the Ordinance to account for this change.

The City has two options in response to this letter.⁹ The City can either amend the Ordinance to comply with State ADU Law¹⁰ 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.¹¹ 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.¹²

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 at Mike.VanGorder@hcd.ca.gov.

Sincerely,



Jamie Candelaria
Section Chief, ADU Policy
Housing Policy Development Division

⁶ Gov. Code, § 66314, subd. (b).

⁷ Gov. Code, § 66313, subd. (i).

⁸ Gov. Code, § 66332, subd. (a).

⁹ Gov. Code, § 66326, subd. (c)(1).

¹⁰ Gov. Code, § 66326, subd. (b)(2)(A).

¹¹ Gov. Code, § 66326, subd. (b)(2)(B).

¹² Gov. Code, § 66326, subd. (c)(1).