

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

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September 24, 2024

Mike Madrid, Planning Manager
Long Range Planning
County of San Diego
5510 Overland Ave, Suite 310
San Diego, CA 92123

Dear Mike Madrid:

**RE: Review of San Diego County'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 Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) Law have been re-numbered (Enclosure 1).

Thank you for submitting the County of San Diego (County) accessory dwelling unit (ADU) Ordinance No. 10858 (Ordinance), adopted July 19, 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 fails to comply with State ADU and JADU Laws in the manner noted below. Under section 66326, subdivision (b)(1), the County has up to 30 days to respond to these findings. Accordingly, the County must provide a written response to these findings no later than October 24, 2024.

The Ordinance addresses many statutory requirements; however, HCD finds that the Ordinance fails to comply with State ADU Law as follows:

1. Section 6156 x, 1, 37, 38 – *Unit Allowance* – The Ordinance states, “An Accessory Dwelling Unit (ADU) and/or one Junior Accessory Dwelling Unit (JADU) is allowed on properties zoned for residential use... with an existing or proposed single-family dwelling (SFD).” It later allows for development of ADUs with multifamily dwellings, stating, “A Non-conforming multifamily complex may have up to two detached ADU’s or may have ADU’s created within the existing multifamily complex (not both).” It is unclear as to whether a ‘conforming multifamily complex’ would be restricted in the same way. It also states that “Multiple detached single-family dwellings on the same lot... may qualify for one ADU or JADU (not both).”

However, limiting the development of ADUs to one per single-family lot or single-family primary dwelling and to one format of ADU on a multifamily lot is inconsistent with State ADU Law. 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.” 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” followed by an enumeration of 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 junior accessory dwelling unit (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 standard simultaneously applies to ADUs created pursuant to Government Code section 66323, subdivisions (a)(3) and (a)(4), on lots with proposed or existing multifamily dwellings according to specified requirements.

Therefore, the County must amend the Ordinance to permit all ADU combinations described in Government Code Section 66323.

2. Section 6156.x.3 – *Accessory Structures* – The Ordinance requires that, to permit ADUs, a lot must not “...have an existing guest living quarters, accessory living quarters, or accessory apartment.” However, Government Code section 66316 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...” Section 66314 does not address the presence of other accessory structures on the lot as being a consideration in the processing of ADU applications. Furthermore, Government Code section 66323, subdivision (a) requires ministerial approval of a unit that conforms to that subdivision without reference to local design standards. Therefore, the County must remove this reference in compliance with state law.

3. Section 6156.x.5 – *Conversion and Size Maximums* – The Ordinance states, “The total floor area of a detached ADU shall not exceed 1,200 square feet...” The introduction to this section creates confusion and incorrectly restricts detached accessory structures to no more than 1,200 square feet, which is inconsistent with State ADU Law. However, Government Code section 66323, subdivision (a) requires ministerial approval of a unit that conforms to that subdivision without reference to local design standards. Therefore, the County must amend this section to clarify and correct.
4. Section 6156.x.11 – *Attachment* – The Ordinance states, “An ADU may be attached to an existing and permitted oversized accessory structure, if the ADU is placed within the existing accessory structure and the overall footprint is not being changed.” However, Government Code section 66323, subdivision (a) requires ministerial approval of a unit that conforms to that subdivision without reference to local design standards. Subdivision (a)(2) specifically refers to “One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling.” The County improperly adds the condition of attachment to another accessory structure which is inconsistent with state law. Therefore, the County must amend the Ordinance to comply with State ADU Law.
5. Section 6156.x.13 and 37.b.ii – *Additional Development Standards* – The Ordinance states, “No additional development standards such as maximum square footage, height, lot coverage, and setbacks are required if an existing and permitted detached or attached accessory structure is being converted into an ADU.” This section applies the preceding development standards to ADUs that are being converted into an ADU. It later states that ADUs with a non-conforming multifamily complex would be “subject to all other regulations.” As has been illustrated in the above and below findings, neither development standards nor local regulations may preclude a unit subject to Government Code section 66323.

Overall, the Ordinance fails to govern units created subject to Government Code section 66314 separately from those created subject to section 66323 and thereby misleads and creates confusion. Units subject to section 66314 may be created with single-family or multifamily primary dwelling units and are subject to specified local development standards; units created subject to section 66323 must be ministerially approved without reference to local development standards. However, the Ordinance improperly regulates all ADUs with the same degree of development standards and makes no distinction or necessary exceptions for section 66323. Therefore, while the “no additional development standards” clause technically complies with State ADU Law, HCD urges the County to amend the Ordinance to create separate categories of governance for section 66314 and section 66323 units so that property owners understand the different processes and respective approvals.

6. Section 6156.x.19 – *Front Setbacks* – The Ordinance states that, “If the proposed ADU encroached into the required front yard setbacks, substantial evidence shall be submitted (such as septic permit/layout, photos, or cross-section drawings of existing grade) to justify the need for placing the proposed ADU (up to 800 sq. ft.) in the front yard setbacks.”

Government Code section 66321, subdivision (b)(3) prohibits the application of front setback requirements from precluding a unit of at least 800 square feet constructed in compliance with all other local development standards. The requirement of “substantial evidence” is not consistent with state law which states “A local agency shall not establish by ordinance... 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, conditioning the approval of such a unit in the front setback upon the submission of “substantial evidence” is inconsistent with section 66321, subdivision (b)(3). Additionally, Government Code section 66316 requires “An approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units...” The application of a “substantial evidence” threshold violates State ADU Law. The County must remove or amend this section to comply with state law.

7. Section 6156.x.23 – *Parking Exception* - The Ordinance provides five conditions under which no parking may be required, and these conditions match those of Government Code section 66322, subdivisions (a)(1) through (a)(5). However, it omits reference to the conditions 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 subdivision.” Therefore, the County must add this language to reflect State ADU Law.
8. Section 6156.x.25 and 38 – *JADUs in Nonconforming Lots* – The Ordinance states, “Properties that have multiple (2 or more) existing, non-conforming SFD’s and are in a residential zone that only allows for one ADU can have an ADU (JADU is not allowed.)” This is later mirrored in subsection 38, which states that “Multiple detached single-family dwellings on the same lot... may qualify for one ADU or JADU (not both).”

However, Government Code section 66323, subdivision (b) states, “A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.” Government Code section 66323, subdivision (a)(1) allows one JADU “per lot with a proposed or existing single-family dwelling...” and section 66333, subdivision (a) permits JADUs to “One per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.”

If the underlying zoning allows for the creation of single-family dwellings on the lot, then one JADU must be ministerially approved per lot (not per single-family dwelling). Therefore, the County must amend the Ordinance to state that one JADU per lot is permitted on lots zoned for single-family dwellings with a proposed or existing single-family dwelling.

9. Section 6156.x.26 – *JADUs on Other Lots* – The Ordinance states, “Properties that have an existing non-conforming SFD and are in a zone that does not allow for a SFD, can have an ADU or JADU (not both). However, Government Code section 66333, subdivision (a) permits JADUs to one “per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.” If the lot does not permit single-family development, no JADU may be created. The County must amend the Ordinance to comply with State ADU Law.
10. Table AL-1.0 – *Alpine Village* – The Ordinance creates a table that allows “Second dwelling units” only in the AL-V2 zone while permitting “Family Residential” in the AL-V1, AL-V2 and AL-CD zones. However, Government Code section 66314, subdivision (d)(2) requires consideration of ADUs anywhere “zoned to allow single-family or multifamily dwelling residential use [that] includes a proposed or existing dwelling.” Therefore, the County must permit ADUs in the AL-V1 and AL-CD zones.

Please note that the County has two options in response to this letter.¹ The County 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 County 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 County and may notify the California Office of the Attorney General that the County is in violation of State ADU Law.⁴

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).

Mike Madrid, Planning Manager

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HCD appreciates the County's efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the County 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,

A handwritten signature in black ink that reads "Jamie Candelaria". The script is cursive and fluid.

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)