

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

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November 27, 2023

Joel Rojas, Development Services Director
Planning Division
City of San Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, CA 92675

Dear Joel Rojas:

**RE: Review of San Juan Capistrano's Accessory Dwelling Unit (ADU) Ordinance
under State ADU Law (Gov. Code, § 65852.2)**

Thank you for submitting the City of San Juan Capistrano (City) accessory dwelling unit (ADU) Ordinance No. 1113 (Ordinance), adopted April 18, 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 65852.2, subdivision (h). HCD finds that the Ordinance does not comply with section 65852.2 in the manner noted below. 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 December 27, 2023.

The Ordinance addresses many statutory requirements; however, HCD finds that the Ordinance does not comply with State ADU Law in the following respects:

- 9-3.501.1 (c)(4) – *Built In Appliances* – In the definition of “Complete independent living facilities”, the Ordinance states “Cooking provisions shall include the use of built-in appliances such as built-in ovens or stoves, as opposed to counter-top ovens and hot plates.” However, Government Code section 65852.22, subdivision (a)(6), states that junior accessory dwelling units (JADUs) may have an efficiency kitchen, defined as “A cooking facility with appliances [and a] food preparation counter and storage cabinets that are of reasonable size in relation to the size of the [JADU]”. Therefore, statute does not require that appliances in efficiency kitchens be built in. The City must amend the language to comply with statute.
- 9.3.501.1 (d)(1)(A) – *Integrated ADUs and JADUs* – The Ordinance creates a category of “Integrated ADUs and JADUs on Single-family lots” and allows “one detached or attached ADU with no maximum size limit” on a lot. However, the use of “integrated ADUs” followed by “detached” and “attached” creates confusion, as Government Code section 65852.2, subdivision (a)(1)(D)(iii),

distinguishes ADUs as “...either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages.” Therefore, the City must amend the statute to properly distinguish between the types of ADU that may be created.

- 9.3.501.1 (d)(1)(B) – *Unit Allowance* – The Ordinance creates four categories of ADUs or JADUs that are allowed with only building permits and appears to mirror the provisions in Government Code section 65852.2, subdivision (e), referring to “by right units”. The Ordinance in Section 9.3.501.1 (d)(1)(B) states “One detached, new construction ADU is allowed on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established on the lot under subsection (d)(1)(A) above....” This establishes that only a JADU subject to Section 9.3.501.1 (d)(1)(A) may be combined with a detached ADU.

However, Government Code section 65852.2, subdivision (e)(1), states, “Notwithstanding subdivisions (a) to (d), 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: (A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling...(i) 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 (B) 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 indicate 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 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. HCD notes that the Legislature, in creating the list, did not use “or” nor “one of” to indicate only one or another would be applicable to the exclusion of the other. This also applies to ADUs created pursuant to Government Code section 65852.2, subdivisions (e)(1)(C) and (D), on lots with proposed or existing multifamily dwellings. Therefore, the City must amend the Ordinance to permit all by-right combinations mandated by State ADU Law.

- 9.3.501.1 (d)(1)(C) – *“Multifamily Dwelling Structure”* – The Ordinance allows “At least one converted ADU is allowed within an existing multi-family structure, and the maximum number of ADUs that may be created within an existing multi-family structure is equal to 25 percent of the existing multi-family dwelling units within that structure.” However, restricting the allowance for such units to being “within that structure” is inconsistent with State ADU Law. Government Code section 65852.2, subdivision (e)(1)(C)(ii), states “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.” The statute specifies that the ADUs are constructed within the multifamily dwelling and not “within an existing multifamily structure.” Therefore, the City must amend the language to match State ADU Law.
- 9.3.501.1 (d)(2) – *Zoning Compliance* – The Ordinance states “Except as allowed under subsection (d)(1) above, no ADU may be created without both a building permit and a zoning-compliance review....” As mentioned above subsection (d)(1) refers to “by right ADUs” pursuant to Government Code section 65852.2, subdivision (e). The Ordinance section (d)(2) provides that all ADUs, except those in (d)(1) are required to have a building permit and zoning-compliance review. However, Government Code section 65852.2, subdivision (c)(2)(C), prohibits “Any requirement for a zoning clearance or separate zoning review” Therefore, the City must remove this provision requiring a zoning review.
- 9.3.501.1 (e)(1)(A) and (B) – *JADUs in Multifamily Zoning* – The Ordinance states “An ADU or JADU subject only to a building permit under subsection (d)(1) above may only be created on a lot located within a single- family or multi-family zoning district.” It later requires “An ADU or JADU subject to zoning-compliance review under subsection (d)(2) above may only be created on a lot in areas zoned to allow single family or multi-family dwelling residential use.” However, Government Code section 65852.22, subdivision (a)(1), requires that local ordinances “Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.” Therefore, JADUs are only allowed on lots zoned for single-family residences. The City must amend the Ordinance to comply with State ADU Law.
- 9-3.501.1 (e)(9)(A) – *Owner Occupancy* – The Ordinance states that “An ADU permitted after January 1, 2020, but before January 1, 2025, is not subject to an owner-occupancy requirement.” With the signing of Assembly Bill 976 (Chapter 751, Statutes of 2023), which becomes effective January 1, 2024, Government Code section 65852.2, subdivision (a)(8), was amended removing owner occupancy requirements for ADUs. The City must amend the Ordinance to comply with the State ADU Law.

- 9-3.501.1 (e)(10) – *Deed Restriction* – The Ordinance requires that “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 Director of Development Services. The deed restriction must run with the land and bind all future owners.” However, Government Code section 65852.2, subdivision (a)(7), states “No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision,” and subdivision (a)(8) states “This subdivision establishes the maximum standards that local agencies 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 this subdivision, shall be used, or imposed....” Subdivision (a) does not require a deed restriction for a building permit, this section of the Ordinance is not consistent with State ADU Law. Although the City may require a deed restriction, the requirement may not be the basis of delay or deny an ADU application and the issuance of a building permit. Therefore, the City must amend or remove this section.
- 9-3.501.1 (e)(2)(ii) – “*Act*” – The Ordinance states that “When an application to create an ADU or JADU is submitted with a permit application to create a new single- family or multifamily dwelling on the lot, the City may delay acting on the application for the ADU or JADU until the City acts on the permit application to create the new single- family or multifamily dwelling...” The language here reflects outdated statute. Current Government Code section 65852.2, subdivision (a)(3), changed “shall act” to “shall either approve or deny”. The City must amend the language to comply with statute.

In response to the findings in this letter, and pursuant to Government Code section 65852.2, subdivision (h)(2)(B), the City must either amend the Ordinance to comply with State ADU Law or adopt the Ordinance without changes. Should the City choose to adopt the Ordinance without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinance complies with State ADU Law despite the findings made by HCD. Accordingly, the City's response should provide a plan and timeline to bring the Ordinance into compliance.

Please note that, pursuant to Government Code section 65852.2, subdivision (h)(3)(A), if the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD may notify the City and the California Office of the Attorney General that the City is in violation of State ADU Law.

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 contact Mike Van Gorder, of our staff, at (916) 776-7541 or 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, with the first letters of the first and last names being capitalized and prominent.

Jamie Candelaria
Senior Housing Accountability Manager