

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

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December 6, 2024

Joel Rojas, Development Services Director
Development Services
City of San Juan Capistrano
30448 Rancho Viejo Road
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, §§ 66310 - 66342)**

Please Note: As of January 1, 2025, with the chaptering of Senate Bill (SB) 1211 (Chapter 296, Statutes of 2024), under Government Code section 66323, subdivision (a)(4)(A)(ii), there is an allowance for "...up to 8 detached ADUs to be created on a lot with an existing multifamily dwelling, provided that the number of ADUs does not exceed the number of existing units on the lot, and up to 2 detached ADUs on a lot with a proposed multifamily dwelling."

Thank you for submitting the City of San Juan Capistrano ADU Ordinance No. 1120 (Ordinance), adopted June 18, 2024, 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 junior accessory dwelling unit (JADU) 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 January 6, 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. 9-3.501.1 (e)(3) – *JADU Rental Terms* – The Ordinance states, "No ADU or JADU may be rented for a term that is shorter than 30 calendar days. This prohibition applies regardless of when the ADU or JADU was created." However, Government Code section 66333 does not require rental term minimums for JADUs and therefore, such a requirement would be a violation of State JADU Law. The City must amend the Ordinance to reflect the law.

2. 9-3.501.1 (e)(7) – *Deed Restriction* – The Ordinance states, “Prior to issuance of a certificate of occupancy 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.” However, while JADUs must be subject to a deed restriction per Government Code section 66333, subdivision (c), no such requirement may apply to ADUs per Government Code section 66315, which 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, except that a local agency may require that the property may be used for rentals of terms 30 days or longer.” Therefore, although deed restrictions are required for JADUs, they are not allowed for ADUs. The City must amend the Ordinance accordingly.

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

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 if you have any questions.

Sincerely,



Jamie Candelaria
Senior Housing Accountability Manager

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).

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)