

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

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August 26, 2024

Isidro Figueroa, Community Development Director
Department of Community Development
City of San Marino
2200 Huntington Drive, San Marino, CA 91108

Dear Isidro Figueroa:

**RE: Review of San Marino's Accessory Dwelling Unit (ADU) Ordinance under
State ADU Law (Gov. Code, §§ 66313 - 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 JADU Law have been re-numbered (Enclosure 1).

Thank you for submitting the City of San Marino (City) ADU Ordinance No. O-24-1411 (Ordinance), adopted March 13, 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 does not 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 September 25, 2024.

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

1. Section 23.01.01 – *ADU Definition* – The Ordinance defines an ADU as, “An attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include a kitchen as defined in this Chapter, a full bath, and permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel where the primary single-family residence is situated.” However, ADUs may also be located on lots and/or parcels with existing or proposed multi-family structures.¹ Therefore, the City must amend its ordinance to allow ADUs on the same parcel as the single-family **or multifamily dwelling** is or will be situated.
2. Section 23.01.01 (2) – “*Converted ADU*” Definition – The Ordinance states that, “A Converted ADU does not include an ADU that would: (a) increase the height of an Existing Structure; (b) require the removal of more than 50 Cubic Yards as

¹ Gov. Code, §§ 66313, subd. (a); 66314; subd. (d)(2); 66317, subd. (a).

part of the excavation of an Existing Structure...” However, ADUs pursuant to Government Code section 66323, subdivisions (a)(1) and (a)(3), may not be precluded from development for increasing the height of an existing structure or removing more than 50 Cubic Yards of the existing structure as a condition of ADU approval. While the City may provide a definition for converted ADUs, the definition cannot preclude ADUs pursuant to Government Code Section 66323, Subdivisions (a)(1) and (a)(3). Therefore, the City must amend its ordinance to remove these sections or explicitly clarify that ADUs converted from existing or proposed space may not be precluded from development.

3. Section 23.02.25, subdivisions (A), (B)(5), (E)(3), (E)(4), (F)(2)(a), (F)(3)(a), (G)(1), (G)(2)(a), (G)(3)(a), (H)(16)(a), & (I)(5) – *Out of Date Code References* – The Ordinance makes repeated references to standards contained within Government Codes 65852.2 and 65852.22. While correct at the time of adoption, these code references are now out-of-date due to the Chaptering of Senate Bill 477. Therefore, the City must amend its ordinance to replace these code references with their, re-chaptered sections.
4. Section 23.02.25 (D)(3) – *Application Denial* – The Ordinance states, “An application that does not conform to the specific standards set forth in this Section, including the development standards set forth in Section 23.02.25(G) shall not be approved ministerially but shall require design review, a conditional use permit, or variance, as applicable. However, state law requires that when a local agency denies an application for an ADU or JADU, the permitting agency shall, within 60 days, return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.”² Therefore, the City must amend its ordinance to reflect the lawful permit denial procedure.

Section 23.02.25 (E) – *Location and Zoning Requirements* – The Ordinance states, “An accessory dwelling unit may be located only on residentially zoned lots or upon a lot with an existing residential dwelling.” However, ADUs must be allowed in all areas zoned to allow single-family or multi-family use, whether these areas are exclusively zoned for residential use or not.³ Therefore, the City must amend its ordinance to reflect state law.

5. Section 23.02.25 (E)(1), (2), and (3) – *ADU Allotment* – The Ordinance states that, “One JADU and one ADU may be constructed on a single family residential lot where the JADU and ADU meet the requirements in Government Code Section 65852.2(e).” However, this language omits the potential for ADUs constructed on lots zoned for multifamily use.⁴ Therefore, the City must amend its ordinance to also allow for ADUs constructed on lots zoned for multifamily use.

² Gov. Code, § 66317, subd. (b).

³ Gov. Code. §§ 66314, 66323, subd. (a)(3).

⁴ Gov. Code, §§ 66314, 66323, subd. (a)(3).

Additionally, 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 “[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 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 subdivision.

This subdivision applies equally to ADUs created pursuant to Government Code section 66323, subdivisions (a)(3) and (a)(4) on lots with proposed or existing multifamily dwellings. Limiting lots to one ADU would prevent property owners from creating ADUs by right under subdivision (a). Therefore, the City must amend its ordinance to allow for ADU development pursuant to Government Code section 66323, subdivisions (a).

6. Section 23.02.25 (E)(4) – *Fire Safety* - The Ordinance states “For fire safety purposes, new ADUs and JADUs may only be located on a residential lot that has: 1) at least a 10-foot wide fire lane within 150 feet of the subject property and 2) a minimum fire flow of 1,000 gallons per minute.” However, Government Code section 66314, subdivision (a) provides that a local agency may, through an ordinance, “Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.” While the City is authorized to designate specific areas where ADUs may be permitted based on impacts on traffic flow and public safety, they can only do so based on substantial evidence in the record that the construction of the ADU it could have a specific, adverse impact on public health and safety⁵. Therefore, the City must remove this section of the Ordinance or explicitly incorporate the “substantial evidence” to comply with State ADU Law.
7. Section 23.02.25 (F)(2) – *Deed Restriction* – The Ordinance requires a deed restriction for ADUs. While Government Code section 66333, subdivision (c) requires the recordation of a deed restriction for JADUs, the deed restrictions for

⁵ Gov. Code, § 66314 (d)(8).

JADUs are limited to prohibit the separate sale of a JADU and a restriction on the size and attributes of the JADU. Government Code section 66315 requires that no additional standards, other than those provided in Government Code Section 66314, shall be used, or imposed on accessory dwelling units. The City may not require a deed restriction prior to and as a condition of approval of an ADU building permit application.⁶ Therefore, the City must amend the Ordinance to remove this requirement.

8. Section 23.02.25 (F)(2)(b) – *JADU Rental Terms* – The Ordinance states, “If the ADU/JADU is rented, it shall not be rented for a period of less than 90(ninety) consecutive days. A minimum 90-day rental requirement imposes rental requirements for JADUs that are inconsistent with state law, which only requires a minimum rental term of 30 (thirty days) for ADUs and JADUs built pursuant to Government Code section 66323.⁷ Therefore, the City must amend its ordinance to clarify that JADUs rental term must be longer than 30 days consistent with Government Code section 66323 subdivision (d).
9. Section 23.02.25 (F)(2)(d); (H)(1); (H)(2); (H)(6) – *Livable Area* – The Ordinance states that, “The ADU/JADU shall be restricted to the Livable Area approved at the time of building issuance.” However, State ADU Law allows for the development of multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space.⁸ Therefore, the City must amend its Ordinance to allow for the development of ADUs pursuant to Government Code section 66323, subd. (a)(3).

Additionally, the Ordinance defines “Livable area” as “the square footage of all floor areas of a building, including basements, measures from the exterior faces of walls...” The Ordinance makes multiple references to “Livable Area” regarding floor area calculations. However, floor area must be calculated according to area within the inside perimeter of the exterior walls of the building under consideration, exclusive of vent shafts and courts, without deduction for corridors, stairways, ramps, closets, the thickness of interior walls, columns, or other features.⁹ Therefore, the City must amend its ordinance to calculate floor area in alignment with the California Building Code (CBC).

10. Section 23.02.25 (F)(2)(e) – *Separate Utilities* – The Ordinance states that, “A second unit may not have utility services separate from those of the main residential structure on the same property.” However, for ADUs described in paragraph (1) of subdivision (a) of Government Code Section 66323, a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the ADU and the utility or impose a related connection fee or capacity charge, unless the ADU was constructed with a new single-family dwelling, or upon separate

⁶ Gov. Code, § 66314.

⁷ Gov. Code, § 66323, subd. (d).

⁸ Gov. Code, § 66323, subd. (a)(3).

⁹ CBC, § 202.

conveyance of the ADU pursuant to Section 66342.¹⁰ Therefore, the City must amend its ordinance to specify that ADUs described in paragraph (1) of subdivision (a) of Government Code Section 66323 are an exception to this standard.

11. Section 23.02.25 (F)(2)(g) – *Permit Revocation* – The Ordinance states that, “Violations and lack of compliance with any provisions of this Section may result in legal action against the property Owner, including revocation of any right to maintain an ADU/JADU on the property...” While this provision aligns with State ADU Law, a local agency, upon request of an owner of an ADU for a delay in enforcement, shall also delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code, pursuant to Government Code section 66331. Therefore, the City should amend its ordinance to clarify that San Marino residents may request such a delay in enforcement of building standards prescribed by the Ordinance under certain conditions.
12. Section 23.02.25 (G)(1) – *ADUs on Multi-family Lots* – The Ordinance outlines the planning application exemptions for ADUs created pursuant to Government Code section 65852.2, subdivisions (e)(1)(A) and (B) (now section 66323, subdivisions (a)(1) and (2)). However, the Ordinance fails to specify, here and elsewhere in Section 23.02.25, the potential for the development of ADUs on lots with proposed or existing multifamily dwellings per Government Code section 66323, subdivisions (a)(3) and (4). As Government Code outlines the standards to be met for this type of ADU on lots with proposed or existing multi-family dwellings, the City’s Ordinance must do the same. Therefore, the City must amend its ordinance to clarify the complete potential for comprehensive ADU development on lots with existing or proposed multi-family dwellings pursuant to state law.
13. Section 23.02.25 (H)(2); (H)(3) – *ADU Height and Datum Point Definition* – The Ordinance restricts attached and detached ADUs from exceeding “one story or sixteen feet in height”. However, these requirements were superseded on January 1, 2023, by the passage of SB 897. Consequently, local agencies may not impose any height limitation that does not allow for the minimum standards enumerated by Government Code section 66321, subdivision (b)(4). Therefore, the City must amend its ordinance to reflect the respective statutory height limitations. Additionally, please clarify what is meant by “datum point” or remove from the Ordinance.
14. Section 23.02.25 (H)(6)(b) – *“Street Facing” Setbacks* – The Ordinance states, “Attached and detached ADU [sic] on corner lots are required to abide by the front and street-facing side yard setback requirements of the underlying zoning district in which the ADU is located.” Further, a setback of no more than four feet from the side and rear lot lines shall be required for an ADU not converted from an existing structure or a new structure constructed in the same location and to

¹⁰ Gov. Code, § 66324, subd. (d).

the same dimensions as an existing structure.¹¹ Any “street-facing side yard setback” regulations that imposes further restrictive setback requirements would conflict with state law. Therefore, the City must amend its ordinance to remove these requirements.

15. Section 23.02.25 (H)(9); (H)(11); (H)(12) – *Design Standards* – The Ordinance states, “An ADU shall exactly match the building materials, color, style, and form of the primary residence.” The Ordinance goes on to state that, “Exterior lighting shall be shielded or directed so that it does not glare off-site or illuminate the primary residence or any adjacent property.” Finally, the Ordinance requires that: “Windows shall be located to avoid direct line of sight to windows of adjacent properties. However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 – 66322 may not preclude the development of ADUs pursuant to Government Code sections 66323. Therefore, the City must amend its ordinance to clarify. .

Additionally, design standards for ADUs must be objective standards, i.e. standards that involve no 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.¹² Terms such as “avoid direct line of sight” are subjective terms. Therefore, the City must adopt objective design standards.

16. Section 23.02.25 (H)(14) – *Design Standards* – The Ordinance states that, “Any common wall separating the accessory dwelling unit from the main building shall be soundproofed.” However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 – 66322 may not preclude the development of ADUs pursuant to Government Code sections 66323. Therefore, the City must amend its ordinance to clarify.

17. Section 23.02.25 (H)(16)(b); (H)(16)(e) – *Parking Standards* – The Ordinance states that ADU parking will not be required if, “The ADU is entirely within a proposed or existing primary dwelling or other structure”, or if “There is a City-approved and dedicated parking space for a car share vehicle located within one block of the ADU. However, local agencies shall not impose parking standards on accessory dwelling units that are **part of** the proposed or existing primary residence, rather those that are entirely within these structures.¹³ Additionally, local agencies shall not impose parking standards ADUs that are located within one block of a car share vehicle, regardless of City approval.¹⁴ Finally, local agencies shall *a/so* not impose parking standards on ADUs when a permit application for an ADU is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot.¹⁵

¹¹ Ibid.

¹² Gov. Code, §§66313, subd. (h); 66314, subd. (b)(1).

¹³ Gov. Code, § 66322, subd. (a)(3).

¹⁴ Gov. Code, §66322, subd. (a)(5).

¹⁵ Gov. Code, § 66322, subd. (a)(6).

Therefore, the City must amend its ordinance to revise parking exemption conditions for ADUs.

18. Section 23.02.25 (I)(1) – *JADU Owner Occupancy* – The Ordinance states that, “The Owner of a parcel proposed for a JADU shall occupy as a principal residence...” However, owner-occupancy is required for the owner of the single-family residence which will contain the JADU, rather than the owner of the parcel on which the residence sits.¹⁶ As a single parcel may contain multiple lots with single family dwellings, the Ordinance fails to specify owner-occupancy requirements in scenarios where the parcel owner and residence owner differ, such as a land lease agreement. Therefore, the City must amend its ordinance to include more precise owner-occupancy language.
19. Section 23.02.25 (I)(4) – *JADU Development Standards* – The Ordinance states that, “The JADU must be contained entirely within the walls of the existing or proposed Single Family Dwelling Unit.” In addition to this requirement, State JADU Law states that enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence and therefore “contained entirely within the walls of the existing or proposed Single Family Dwelling Unit”.¹⁷ Therefore, the City must add this language to comply with State JADU Law.
20. (I)(7) – *JADU Interior Entry* – The Ordinance states, “An interior entry to the main living area shall be provided to serve a JADU.” However, a requirement for an interior entry from JADU to main living area shall only be required if the JADU lacks a separate bathroom.¹⁸ Therefore, the City must amend its ordinance to remove this requirement or specify when, and only when, this requirement may apply.

The City has two options in response to this letter.¹⁹ The City can either amend the Ordinance to comply with State ADU Law²⁰ 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.²¹ 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.²²

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.

¹⁶ Gov. Code, § 66333, subd. (b).

¹⁷ Gov. Code, § 66333, subd. (d).

¹⁸ Gov. Code, § 66333, subd. (e)(2).

¹⁹ Gov. Code, § 66326, subd. (c)(1).

²⁰ Gov. Code, § 66326, subd. (b)(2)(A).

²¹ Gov. Code, § 66326, subd. (b)(2)(B).

²² 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)