

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

651 Bannan Street, Suite 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



December 24, 2024

Ray Pascua, Planning Manager
City of Villa Park
17855 Santiago Boulevard
Villa Park, CA 92861

Dear Ray Pascua:

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

Thank you for submitting the City of Villa Park (City) accessory dwelling unit (ADU) Ordinance No. 2023-630 (Ordinance), adopted December 19, 2023, to the California Department of Housing and Community Development (HCD). The Ordinance provides language altering only section 23-22.6 of the Municipal Code ("Municipal Code") and omits language and changes relevant to sections 23-22 through 23-22.5. HCD has reviewed the Ordinance and Municipal Code and submits these written findings pursuant to Government Code section 66326, subdivision (a). HCD finds that the Ordinance and Municipal Code fail 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 23, 2025.

The Ordinance and Municipal Code address many statutory requirements; however, HCD finds that they do not comply with State ADU Law in the following respects:

1. *Senate Bill (SB) 1211 (Chapter 296, Statutes of 2024)* – As of January 1, 2025, there will be changes to Government Code section 66323. Subdivision (a)(4)(A)(ii), now allows 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." Additionally, subdivision (b) now states "A local agency shall not impose any objective development or design standard that is not authorized by this section upon any accessory dwelling unit that meets the requirements of any of paragraphs (1) to (4), inclusive, of subdivision (a)." Therefore, the County must amend the Ordinance to account for these changes.

2. *Assembly Bill (AB) 2533 (Chapter 834, Statutes of 2024)* - As of January 1, 2025, there will be changes to Government Code section 66332, subdivisions (a) – (b) and added subdivisions (d) – (f) which makes changes to permitting unpermitted ADUs, added the same protections for unpermitted JADUs, and set additional requirements for local agencies. The County should review these new requirements and adjust the Ordinance to comply with State ADU Law.
3. *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 code sections.
4. Section 23-22.3 – *Denial* – The Municipal Code states, “The Planning Department shall approve or disapprove an application for an accessory dwelling unit permit within sixty (60) days after receiving the complete application.” However, Government Code section 66317, subdivision (b) requires “If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subdivision (a), the permitting agency shall, within the time period described in subdivision (a), 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.” Therefore, the City must amend the Code to provide for the denial comments.
5. Section 23-22.6 b. – *Nonconformity* – The Municipal Code states, “Per State law, between January 1, 2020, and January 1, 2025, the City shall not require the correction of nonconforming zoning issues as a condition for approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit.” However, Government Code section 66332, subdivision (b) and section 66323, subdivision (b), which prohibit “the correction of nonconforming zoning conditions,” make no reference to a specific window of time and this standard therefore is inconsistent with State ADU Law. The City must remove references to the year of application from this section.
6. Section 23-22.6 c. – *Unit Allowance* – The Municipal Code permits, “No more than one (1) accessory dwelling unit and one (1) junior accessory dwelling unit located on it at any time.” 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 "[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. Therefore, the City must amend the Municipal Code to provide for all ADU combinations described in Government Code section 66323.

7. Section 23-22.6 C.1.a. and C.1.b – *Size Exception* – The Ordinance states, "For properties under 1 acre in size, 1,200 square feet for detached accessory dwelling units. 1,200 square feet for attached accessory dwelling units, or 50% of the primary unit, whichever is less." It then states "For properties 1 acre and larger in size, 1,500 square feet for detached accessory dwelling units. 1,500 square feet for attached accessory dwelling units, or 50% of the primary unit, whichever is less." However, in both cases Government Code section 66321, subdivision (b)(3) would apply, which prohibits "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, the City must amend the Ordinance to permit the minimum ADU size of 800 square feet when 50% of a primary unit that is less than 1600 square feet results in a violation of State ADU Law.
8. Section 23-22.6 d.1.d – *Height* – The Ordinance states that detached ADUs within one-half mile from transit, "May be permitted to a height of 18 feet, including ADUs with a roof pitch matching the existing or proposed primary dwelling unit." However, Government Code section 66321, subdivision (b)(4)(B) states "A local agency shall also allow an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit." The City must amend the Ordinance to provide for this extra two feet.
9. Section 23-22.6 d – *Parking Exceptions* – The Ordinance states, "Notwithstanding this parking requirement, the City shall not impose parking standards for an accessory dwelling unit in any of the following instances..." before listing conditions that match those of Government Code section 66322,

subdivisions (a)(1), (a)(3), (a)(4), and (a)(5). However, the Ordinance omits subdivision (a)(2), "Where the accessory dwelling unit is located within an architecturally and historically significant historic district," and 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 City must amend the Ordinance to include all applicable parking exceptions.

10. Section 23-22.6 e. – *Setbacks* – The Ordinance states, "Two story detached accessory dwelling units shall maintain a ten (10) foot side and rear yard setback. All detached ADUs shall maintain 50-foot front yard setbacks; however the front yard setback shall not unduly constrain the creation of ADUs. The Planning Department shall determine if a front yard setback is unduly constraining the creation of an ADU."

However, Government Code section 66314, subdivision (d)(7) requires that "A setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure." Therefore, the requirement for ten feet exceeds state ADU Law.

Additionally, Government Code section 66321, subdivision (b)(3) prohibits "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, front yard setbacks may not, under any circumstance, prohibit an 800 square foot unit.

Lastly, the phrase "The Planning Department shall determine if a front yard setback is unduly constraining the creation of an ADU" provides no objective criteria for how "undue constraint" can be measured. This is inconsistent with Government Code section 66314, subdivision (a)(2) which allows local jurisdictions to apply "objective standards on accessory dwelling units." The City must amend the Ordinance to comply with State ADU Law.

11. Section 23-22.6 I – *Subjective Criteria* – The Ordinance states that the exterior design must be “substantially similar to the primary dwelling.” This is inconsistent with Government Code section 66314, subdivision (a)(2) which allows local jurisdictions to apply “objective standards on accessory dwelling units.” The City must remove such subjective language.
12. Section 23.22 I.6 – *Separate Sale* – The Ordinance states, “The City of Villa Park does not allow the separate sale of ADUs under AB 1033.” However, Government Code section 66341 requires the allowance of separate conveyance given provided conditions. The City must review State ADU Law and amend the Ordinance to provide for separate sale.
13. Section 23-22.7 b – *JADUs and Owner Occupancy* – The Ordinance states, “Same owner-occupancy shall not be required in the single-family residence in which the junior accessory dwelling unit will be permitted.” However, Government Code section 66333, subdivision (b) states that JADU Ordinances must “Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.” Therefore, the City must include the owner-occupancy requirement for JADUs.
14. Section 23-22.7 c.– *JADUs in Garages* – The Ordinance states, “Junior accessory dwelling unit may only be permitted to be constructed within the walls of a proposed or existing residence.” However, Government Code section 66333, subdivision (d) states “For purposes of this subdivision, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” Therefore, the City must amend the Ordinance to allow for JADUs in attached garages.
15. Section 23-22.7 – *Shared Facilities* – The Ordinance does not provide for shared sanitation. However, Government Code section 66333, subdivision (e)(2) states “If a permitted junior accessory dwelling unit does not include a separate bathroom, the permitted junior accessory dwelling unit shall include a separate entrance from the main entrance to the structure, with an interior entry to the main living area.” The City must amend the Ordinance to provide for this allowance.

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)