

Attachment C

HCD Review Letter Dated October 1,
2024

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

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October 1, 2024

Jaime Murillo, Community Development Deputy Director
Department of Community Development
City of Newport Beach
100 Civic Center Drive,
Newport Beach, CA 92660

Dear Jaime Murillo:

**RE: Review of Newport Beach'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 ADU and junior accessory dwelling unit (JADU) Law have been re-numbered (Enclosure 1).

Thank you for submitting the City of Newport Beach's accessory dwelling unit (ADU) Ordinance No. 2023-2 (Ordinance), adopted February 14, 2023, to the California Department of Housing and Community Development (HCD). The Ordinance was received on February 18, 2023. 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. 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 October 31, 2024.

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

1. *Section 20.48.200 B.4. – Legally Established Non-conforming Zoning Conditions*
– The Ordinance does not require ADUs and JADUs to "...correct legally established nonconforming zoning condition(s), building code violation(s), and/or unpermitted structure(s) that do/does not present a threat to public health and safety and is/are not affected by the construction of the accessory dwelling unit or junior accessory dwelling unit." However, Government Code section 66323, subdivision (b) specifically provides that a local agency shall not require the correction of nonconforming zoning conditions. Additionally, section 66322(b) prohibits the denial of a permit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not

present a threat to public health and safety and are not affected by the construction of the ADU. Neither section includes “legally established”. Unpermitted structures are unlikely legally established. The City’s ordinance therefore likely restricts units whose protection is specifically provided for by statute. Therefore, the City must remove the phrase “legally established” from the Ordinance.

2. *Section 20.48.200 C.2. – Conditions on Development* – The Ordinance requires ADUs and JADUs conform to development standards and requirements “as provided in this section.” 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...” Section 66323 precludes zoning development standards and requirements for ADUs and JADUs. Therefore, the City must note the exception for units described in subdivision (a) in its ordinance.
3. *Section 20.48.200 D.1. – Unit Allowance* – The Ordinance states, “Only one (1) of the categories described below in this subsection may be used per lot.” 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 means that any of these ADU types found in section 66323 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 that meets the size and setbacks pursuant to the subdivision, the local agency cannot deny the permit, 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 residential lots to one ADU would prevent property owners from creating ADUs by-right under subdivision (a) of section 66323 of the Government Code.

Therefore, the City must remove the restriction on the combination of units authorized by state law.

4. *Section 20.48.200 D.3. & D.4.a.iii. – Multi-Unit Detached ADUs* – The Ordinance states, “For the purposes of this section, a multi-unit development approved and built as a single complex shall be considered one (1) lot, regardless of the number of parcels.” However, Government Code section 66323, subdivision (a)(3)(A) requires that at least one ADU be permitted on a lot with a multifamily dwelling. Moreover, the 2022 California Building Code defines “lot” as “A portion or parcel of land considered as a unit.” The City incorrectly limits the number of parcels within a ‘lot’ which could result in a limitation on the number of ADUs on parcels. This could have the effect of limiting the number of ADUs allowable on parcels with multifamily units owned as separate interests. Therefore, the City should remove the restriction on parcels.
5. *Section 20.48.200 F. – Development Standards* – The Ordinance requires ADUs and JADUs to “conform to all objective standards of the underlying residential zoning district, any applicable overlay district, and all other applicable provisions...” However, Government Code section 66317, subdivision (c) precludes local ordinance, regulation or policy not contained within the City’s ADU ordinance from being the basis of delay or denial of an ADU or JADU permit application. While Government Code section 66314, subdivision (d)(8) refers to local building code standards, zoning and design standards that exist outside of the City’s ADU ordinance cannot be imposed on ADUs. Moreover, local design standards provided by the Ordinance pursuant to Government Code sections 66314 – 66322 may not preclude the development of ADUs created per section 66323, as noted above. Therefore, the City must amend its ordinance to remove requirements that ADUs conform to underlying zoning standards, and ‘other’ unspecified provisions not in the ADU ordinance.
6. *Section 20.48.200 F.2.b. – Building and Demolition Permits* – The Ordinance states, “For an accessory dwelling unit that will replace a detached garage, the building and demolition permits shall be reviewed and issued concurrently.” The City should amend the Ordinance to specify that building, and demolition permits are reviewed and issued concurrently for JADUs as well.
7. *Section 20.48.200 F.3. – Building Height* – The Ordinance requires attached ADUs to “comply with the height limit as required by underlying zoning district.” While this appears to comply with State ADU Law, Government Code section 66321, subdivision (b)(4)(D) precludes a local agency from requiring less than “A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling. This subparagraph shall not require a local agency to allow an accessory dwelling unit to exceed two stories.” The City’s Ordinance does not reflect the 25 feet height minimum. Moreover, it is

unclear whether this requirement would permit a second story. The City should clarify these sections to ensure building heights and stories for attached ADUs are not unduly restricted.

8. *Section 20.48.200 F.4.a. – ADU Size Maximum* – The Ordinance limits the maximum unit size of attached and detached ADUs. However, Government Code section 66323, subdivision (a)(4), which applies to detached ADUs on lots with multifamily dwellings, does not have a size maximum. ADUs and JADUs created per section 66323 are not subject to the City’s objective zoning standards, including size. The City’s size maximum in this section therefore cannot limit detached ADUs allowed under section 66323. The City must amend the Ordinance to note the exception for detached ADUs allowed under section 66323.
9. *Section 20.48.200 F.4.e. – JADU Minimum Size* – The Ordinance requires a JADU to be a minimum size of an efficiency dwelling unit. While an ADU is defined as also including an efficiency dwelling unit, a JADU does not contain such a provision. While the maximum JADU size is 500 sq ft, a minimum JADU size is determined by applicable building and residential codes as the minimum room size plus an efficiency kitchen. Projects subject to the Supplement to the 2022 California Building Standards Code (CBC), section R304.1 through R304.3 of the California Residential Code (CRC), and sections 1208.1 through 1208.4 of the CBC, respectively, should be considered before applying a minimum JADU size. Since a minimum size of a JADU might be less than the minimum size of an efficiency dwelling unit, the City should amend the Ordinance to reflect the valid minimum size allowed for a room.
10. *Section 20.48.200 F.8.e. – Replacement Parking* – The Ordinance affirms that when off-street covered parking is demolished in conjunction with an ADU, “those off-street parking spaces are not required to be replaced.” This substantially complies with State ADU Law. However, JADUs must only comply with “applicable building standards,” and do not require “additional parking” as a condition for obtain a building permit.¹ JADUs must only comply with the development standards set forth in JADU Law.² The City’s ordinance does not expressly exempt JADUs from replacement parking when a garage is converted as part of the enclosed use within the residence permitted by law.³ This creates confusion and indicates the City may require replacement parking when covered parking is converted into a JADU, which is inconsistent with the Law. Therefore, the City must amend this section to specifically exclude JADUs from replacement parking.

¹ Gov. Code, § 66334, subds. (a) and (b).

² Gov. Code, § 66323, subd. (a)(1)(D).

³ Gov. Code, § 66333, subd. (d).

11. *Section 20.48.200 H.1. – Separate Conveyance* – The Ordinance states, “An accessory dwelling unit or junior accessory dwelling unit may be rented, but no accessory dwelling unit or junior accessory dwelling unit may be sold or otherwise conveyed separately...” However, Government Code section 66341 provides for the sale or separate conveyance of ADUs. The City must amend the ordinance to allow for the sale or separate conveyance of ADUs.
12. *Section 20.48.200 H.3. – Owner Occupancy* – The Ordinance requires owner occupancy requirements on ADUs. Assembly Bill 976 (Chapter 751, Statutes of 2023) amended Government Code section 66315 to prohibit owner-occupancy requirements. “No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement...” The City must remove these occupancy restrictions from the Ordinance.
13. *Section 20.48.200 I. — Deed Restrictions* – The Ordinance requires a deed restriction for ADUs. Government Code section 66333, subdivision (c) requires the recordation of a deed restriction for JADUs, which are limited to restricting the sale of the JADU separate from the single-family residence. 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. Deed restrictions are not authorized under state law for ADUs. The City may not require a deed restriction prior to and as a condition of approval of an ADU building permit application. Therefore, the City must amend the Ordinance to remove the requirement of a deed restriction on ADUs.

The City has two options in response to this letter.⁴ The City can either amend the Ordinance to comply with State ADU Law⁵ 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.⁶ 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.⁷

⁴ Gov. Code, § 66326, subd. (c)(1).

⁵ Gov. Code, § 66326, subd. (b)(2)(A).

⁶ Gov. Code, § 66326, subd. (b)(2)(B).

⁷ Gov. Code, § 66326, subd. (c)(1).

HCD appreciates the City's efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assisting the City in fully complying with State ADU Law. Please feel free to contact our staff, Michael McLaughlin, at Michael.McLaughlin@hcd.ca.gov if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Jamie Candelaria". The script is fluid and cursive, with the first letters of each word being capitalized and prominent.

Jamie Candelaria
Senior Housing Accountability Manager
Housing Policy Development Division

Enclosures

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)