

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

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November 13, 2024

Salvador Lopez, Jr.  
Interim Assistant Planning Director  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, California 90265-4861

Dear Salvador Lopez, Jr:

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

Thank you for submitting the City of Malibu (City) ADU Ordinance No. 511 (Ordinance), adopted January 8, 2024, to the California Department of Housing and Community Development (HCD). The Ordinance was received on February 1, 2024. 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 December 13, 2024.

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

1. *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.
2. Section 17.44.050(C) – *Ingress and Egress* – The Ordinance states, “Areas with Adequate Ingress and Egress. Since the entire City is located within [sic] a designated “Very High Fire Hazard Severity Zone,” (VHFHSZ) consistent with Los

Angeles County Fire Department requirements to ensure adequate ingress and egress for fire safety, a minimum street width of 20 feet shall be required. ADUs are not allowed on parcels that do not have ingress and egress to a street at least 20 feet in width.”

However, Government Code section 66314, subdivision (a) states that an ordinance shall “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.” The ordinance does not designate the specific areas where ADUs are prohibited in accordance with Government Code section 66314, subdivision (a). Additionally, Government Code section 66315 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...” The City of Malibu’s adopted Fire Code is the 2022 California Fire Code (CFC), not The Los Angeles County Fire Code, as mentioned. These additional standards on single-family ADU development imposed by other policies or regulations are not compliant with State ADU Law.

Further, while the California Department of Forestry and Fire Protection (CALFIRE) maps establish the VHFHSZ boundaries, the purpose of these maps is not to limit the locations where ADUs or other dwellings may be permitted. Rather, the CALFIRE maps identify areas in which hazard mitigating building design standards will apply. The City may not restrict ADUs pursuant to Government Code section 66314 et seq. while simultaneously allowing, through its building and zoning codes, other new residential development, and therefore, the City must remove this requirement.

Section 17.44.050(D) – *Multifamily ADUs* – The Ordinance states, “New attached ADUs are not allowed” on multifamily lots. However, Government Code section 66314, subdivision (d)(3) states “A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall... Require the accessory dwelling units to comply with all of the following:

The accessory dwelling unit is 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.”

ADUs may be attached, converted from existing space, or detached from both single-family and multifamily dwellings. Prohibiting the construction of ADUs

attached to multifamily dwellings would not be compliant with State ADU Law. Therefore, the City must remove this provision.

3. Section 17.44.060 – *Approvals* – The Ordinance states, “Because the City of Malibu lies entirely within the Coastal Zone, every ADU application in the City is subject to an analysis for compliance with the Local Coastal Program (LCP) and Coastal Act before it is reviewed for compliance with this Chapter. If an application for an ADU is not subject to the LCP, then this Chapter governs.” While it is true that Government Code section 66329 states that State ADU Law shall not be “...construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976...” the City must review all ADU applications for any provisions or attributes which are not addressed within the LCP in compliance with State ADU Law. Only applying the provisions of the LCP to ADU applications is not in compliance with State ADU Law. Therefore, the City must amend this section to clarify that the provisions within State ADU Law are applicable to an application wherever those provisions are not directly in conflict with the provisions of an approved LCP.
4. Section 17.44.070 (B)(2) – *Action on Application* – The Ordinance states, “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 permit application for the ADU or JADU until the city acts on the permit application to create the new single-family or multifamily dwelling...” However, Government Code section 66317, subdivision (a) states, “If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing.” As of January 1, 2023, this provision was amended to clarify that a local agency must “approve or deny” an application within the 60-day timeframe, rather than simply “act” on it. Therefore, the City should amend this section to reflect the requirement to “approve or deny” an application in accordance with State ADU Law.
5. Section 17.44.080 (F)(1) – *Separate Sale* – The Ordinance states, “Except as otherwise provided in Government Code Section 65852.26, the ADU or JADU may not be sold separately from the primary dwelling.” However, Government Code section 66341, (formerly Government Code section 65852.26), does not include any provisions for the separate sale of JADUs. JADUs may not be sold separately from the primary structure under State ADU Law. Therefore, the City should clarify that there are no circumstances within State ADU Law which allow for the separate sale of a JADU.

6. Section 17.44.080 (F)(2), (4), (5), and (7) – *Deed Restrictions* – The Ordinance states, “Prior to issuance of a building permit for an ADU or JADU, a deed restriction must be recorded against the title of the property...” and lists several restrictions which are not in compliance with State ADU Law. Those not in compliance include:
  - “2. The ADU or JADU must remain an ADU unless City approval is obtained to convert the structure to a different accessory structure.
  4. The ADU or JADU is restricted to the approved size.
  5. The JADU must be reconverted to be part of the primary residence if the owner does not reside on the property.
  7. The deed restriction may be removed if the owner eliminates the ADU or JADU, as evidenced by, for example, removal of the kitchen facilities. To remove the deed restriction, an owner may make a written request of the Director, providing evidence that the ADU or JADU has in fact been eliminated. The Director may then determine whether the evidence supports the claim that the ADU or JADU has been eliminated. Appeal may be taken from the Director’s determination consistent with other provisions of this Code. If the ADU or JADU is not entirely physically removed but is only eliminated by virtue of having a necessary component of an ADU or JADU removed, the remaining structure and improvements must otherwise comply with applicable provisions of this Code.”

However, no deed restrictions, other than for those items explicitly mentioned within Articles 2, 3, and 4 of Chapter 13, Division 1, Title 7 of the Government Code may be applied to ADUs or JADUs. Government Code section 66333, subdivision (b), removes the owner-occupancy requirement for JADUs when the owner is a governmental agency, land trust, or housing organization. JADU deed restrictions may include a maximum size of 500 square feet for a JADU, among other restrictions on attributes which conform to article 3, pursuant to Government Code section 66333, subdivision (c). Therefore, the City must remove these excessive deed restriction requirements.

7. Section 17.44.080 (I) – *Height* – The Ordinance states, “No ADU subject to this Chapter may exceed 16 feet in height above grade, as measured from existing or finished legal grade, whichever results in the lower building height...” However, section 202 of the 2022 California Building Code (CBC) defines ‘Height, Building’ as “The vertical distance from grade plane to the average height of the highest roof surface.” Additionally, the City of Malibu Municipal Code does not amend this definition pursuant to section 1.8.6 of the CBC and may not erroneously apply it exclusively to the construction of ADUs. Therefore, the City must amend this section to reflect a definition of “height” that is consistent with the CBC.
8. Section 17.44.090 (A)(1) – *Ceiling Height* – The Ordinance states, “The maximum square footage shall include interior and exterior walls, finished and unfinished basements, mezzanines, storage space, and any space with a height clearance

(floor to ceiling height dimension) above six feet.” However, section 1208.2 of the CBC states “Occupiable spaces, habitable spaces and corridors shall have a ceiling height of not less than 7 feet 6 inches above the finished floor. Bathrooms, toilet rooms, kitchens, storage rooms and laundry rooms shall have a ceiling height of not less than 7 feet above the finished floor.”

Additionally, Section R305.1 of the 2022 California Residential Code (CRC), which applies to one- and two-family dwellings, states, “Habitable space, hallways and portions of basements containing these spaces shall have a ceiling height of not less than 7 feet. Bathrooms, toilet rooms and laundry rooms shall have a ceiling height of not less than 6 feet 8 inches.” The City of Malibu Municipal Code does not include amendments to these provisions pursuant to section 1.8.6 of the CBC and may not erroneously apply it exclusively to the construction of ADUs. Therefore, the City must amend this section to reflect a size calculation that is consistent with the CBC/CRC.

9. Section 17.44.090 (A)(2), (A)(3) – *Size, Attached* – The Ordinance states, “An ADU that is attached to the primary dwelling is limited to 50 percent of the existing primary dwelling .... Application of other development standards in this Section 17.44.090 might further the [sic] limit the size of the ADU, but no application of an FAR, front-setback, lot-coverage, or open-space requirement may require the ADU to be less than 800 square feet.” However, Government Code section 66321, subdivision (b)(3) states, “a local agency shall not establish by ordinance... 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.” An attached ADU may be 800 square feet in size regardless of the size of the primary unit, as long as it remains compliant with other objective development standards other than those listed. Restricting the size of attached ADUs to less than 800 square feet directly conflicts with Government Code section 66321, subdivision (b)(3). Therefore, the City must amend this section to reflect the 800 square foot exemption.
10. Section 17.44.090 (D)(2) – *Parking Exceptions* – The Ordinance states, “No parking under subsection (E)(1)[sic] above is required in the following situations...” However, there is no subsection (E)(1) to reference. The general parking standards appear to be subsection (D)(1). Therefore, the City should amend this section to correct the reference.

Please note that the City has two options in response to this letter.<sup>1</sup> The City can either amend the Ordinance to comply with State ADU Law<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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 and JADU Law. Please feel free to contact Tyler Galli, of our staff, at (916) 776-7613 or at [Tyler.Galli@hcd.ca.gov](mailto:Tyler.Galli@hcd.ca.gov).

Sincerely,



Jamie Candelaria  
Senior Housing Accountability Manager  
Housing Policy Development Division

Enclosure

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<sup>1</sup> Gov. Code, § 66326, subd. (c)(1).

<sup>2</sup> Gov. Code, § 66326, subd. (b)(2)(A).

<sup>3</sup> Gov. Code, § 66326, subd. (b)(2)(B).

<sup>4</sup> Gov. Code, § 66326, subd. (c)(1).

**State ADU/JADU Law Statutory Conversion Table**

<b>New Government Code Sections</b>	<b>Previous Government Code Sections</b>
<b>Article 1. General Provisions</b>	
66310	65852.150 (a)
66311	65852.150 (b)
66312	65852.150 (c)
66313	General Definition Section 65852.2 (j) 65852.22 (j)
<b>Article 2. Accessory Dwelling Unit Approvals</b>	
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.
<b>Article 3. Junior Accessory Dwelling Units</b>	
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)
<b>Article 4. Accessory Dwelling Unit Sales</b>	
66340	65852.26 (b)
66341	65852.26 (a)
66342	65852.2 (a)(10)