

**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



August 20, 2024

Shaun Temple, Planning Manager
Planning Department
City of Seal Beach
211 Eighth Street
Seal Beach, CA 90740

Dear Shaun Temple:

**RE: Review of Seal 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 JADU Law have been re-enumerated (Enclosure 1).

Thank you for submitting the City of Seal Beach (City) accessory dwelling unit (ADU) Ordinance No. 1706 (Ordinance), adopted September 11, 2023, 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 JADU Laws as specified below. Under 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 19, 2024.

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

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 11.4.05.115 (D)(1)(b) and (c) - *Unit Allowance* - The Ordinance states that a new construction detached ADU, "may be combined with a JADU described in subsection (D)(1)(a) of this section." It later states "A property owner

may be allowed to develop ADUs on a lot in accordance with only one of the following categories (i or ii)...” Both statements restrict the development of ADUs to one category per primary dwelling format.

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 Ordinance to provide for all ADU combinations described in Government Code section 66323.

This simultaneously applies to multifamily primary dwellings in that ‘any’ refers to both subdivision (a)(3), which states “Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings... A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units,” and (a)(4), which allows “Not more than two accessory dwelling units that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling...”

Therefore, the City must amend the language to permit all units described in Government Code section 66323.

3. Section 11.4.05.115 (E)(5) - “*Act Upon*” - The Ordinance states, “The City shall act upon the Zoning Conformance Review and building permit within 60 days of receiving an application...” However, Government Code section 66317, subdivision (a) requires that, “The permitting agency **shall either approve or deny** the application to create or serve an accessory dwelling unit or a junior

accessory dwelling unit within 60 days from the date the permitting agency receives a completed application..." Therefore, the City must change the language from "shall act" to "shall approve or deny".

4. Section 11.4.05.115 (F)(2)(a)(i) - *Fifty Percent Restriction* - The Ordinance states that attached ADUs with an existing primary dwelling, "shall not exceed the lesser of... fifty percent (50% of the gross floor area for the Primary Dwelling..." 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, the City must reflect the statutory prohibitions regarding minimum/maximum size.
5. Section 11.4.05.115 (F)(3)(b) - *Parking Exception* - The Ordinance provides five conditions under which no parking may be required. While those conditions reflect Government Code section 66322, subdivisions (a)(1) through (a)(5), the Ordinance omits reference to the condition of subdivision (a)(6). Subdivision (a)(6) states, "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 paragraph." Therefore, the City must add this language to comply with State ADU Law.
6. Section 11.4.05.115 (H) - *Covenant* - The Ordinance states, "Prior to the issuance of a Certificate of Occupancy for the ADU or JADU, the property owner shall record a declaration of restrictions..." However, a deed restriction cannot be imposed on an ADU. Government Code section 66315 states, "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." A deed restriction would be an "additional standard" and an unlawful restriction on the use of an ADU. The City must remove this provision from the Ordinance.
7. Section 11.4.05.115 (H)(4) - *Owner Occupancy* - The Ordinance states, "For any ADU permitted on or after January 1, 2025, either the ADU or Primary Dwelling shall be occupied by the owner of record." However, 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, 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, the City must remove this section.

Please note that the City has two options in response to this letter¹. 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 findings³. 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 Law⁴.

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 or would like HCD’s technical assistance in these matters.

Sincerely,



Jamie Candelaria
Senior Housing Accountability Unit Manager
Housing Policy Development Division

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)