



City of Pomona

# PLANNING COMMISSION STAFF REPORT

DEVELOPMENT SERVICES | PLANNING DIVISION

December 11, 2024

**FILE NO:** CODE AMENDMENT – CODE-001662-2024

A code amendment to the City of Pomona Zoning and Development Code for the purpose of regulating Accessory Dwelling Units in compliance with State law.

**ADDRESS:** City-wide

**APPLICANT:** City initiated

**PROJECT PLANNER:** Vinny Tam, Supervising Planner

**ENVIRONMENTAL REVIEW:** Under California Public Resources Code Section 21080.17, the California Environmental Quality Act ("CEQA") does not apply to the adoption of an ordinance by a city or county implementing the provisions of Section 65852.1 or Article 2 (commencing with Section 66314) of Chapter 13 of Division 1 of Title 7 of the Government Code, which is California's Accessory Dwelling Unit and Junior Accessory Dwelling Unit law. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State's Accessory Dwelling Unit law.

**STAFF RECOMMENDATION:** The Planning Division recommends the Planning Commission adopt the attached draft Resolution (Attachment 1) recommending the City Council approve the Code Amendment (CODE-001662-2024).

## PROJECT DESCRIPTION

A city-initiated request to amend the City of Pomona Zoning and Development Code (PZDC) for the purpose of regulating Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) in accordance with new State law effective January 1, 2025 (AB 2533 and SB 1211). If approved, this request will amend Section 830.A of the PZDC pertaining to ADU and JADU regulations.

## BACKGROUND

### History of State Law Regulating ADUs

The State legislature first adopted regulations for second units in 1982. The State legislature adopted subsequent amendments to the original law in 1986, 1990, and 1994. Under these earlier regulations, municipalities could require a conditional use permit for second units. In 2003, the State legislature approved Assembly Bill (AB) 1866, which prohibited municipalities from requiring a conditional use permit for second units. In response to AB 1866, the City adopted an ordinance in 2003 to regulate second units in accordance with State law, including allowing ministerial approval of second units.

In September 2016, California State Senate Bill (SB) 1069, AB 2299 and AB 2406 were signed into law. The combined bills took effect on January 1, 2017, making significant modifications to California Government Code sections that collectively govern ADUs and JADUs, as well as permanently changing the name of second units to ADUs.

Since the passage of SB 1069, AB 2299, and AB 2406, the State has continued to adopt new legislation modifying ADU law on an annual basis. The passage of the most recent legislation, AB 2533 and SB 1211 (Attachments 2 and 3), is the latest set of changes to ADU law that the City must implement. It should be noted that if a local agency has an existing ADU ordinance that fails to meet state law, that ordinance shall be null and void and that agency shall thereafter apply the standards established under state law only for the approval of ADUs.

### **Recently Passed State Law**

As noted above, AB 2533 and SB 1211 are the most recently adopted pieces of legislation modifying ADU law. A summary of the regulations provided by Best, Best, and Krieger is noted below.

#### AB 2533

Unpermitted ADUs and JADUs. With some limited exceptions, Government Code Section 66332 already prohibits local agencies from denying a permit to legalize an unpermitted ADU that was constructed before January 1, 2018, if the denial is based on the ADU not complying with applicable building, state or local ADU standards. One exception allows local agencies to deny a permit to legalize if they make a written finding that correcting the violation is necessary to protect the health and safety of the public or the occupants of the structure.

AB 2533 alters this landscape by amending Government Code Section 66332 to: (1) expand its applicability to JADUs; (2) change the construction cutoff date from January 1, 2018, to January 1, 2020; (3) replace the above exception with a requirement that local agencies find that correcting the violation is necessary to comply with the standards specified in Health and Safety Code Section 17920.3 (Substandard Buildings); (4) mandate new public-notification requirements about limits on local regulation, substandard-building criteria, and pre-application inspection by a private contractor; and (5) address scope of city inspections and limits on remedial action. (See amended Gov. Code, § 66332(a)-(c).)

#### SB 1211

Replacement Parking. Existing Government Code Section 66314(d)(11) already prohibits local agencies from requiring of-street parking spaces to be replaced when a garage, carport or covered parking structure is demolished in conjunction with the construction of, or converted to,

an ADU. SB 1211 amends this subsection to also prohibit local agencies from requiring replacement parking when an uncovered parking space is demolished for or replaced with an ADU.

Multifamily ADUs. Under existing Government Code Section 66323(a)(3)(A), local agencies must ministerially approve qualifying building permit applications for ADUs within “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 ....” The term “livable space” is not defined by State ADU law.

SB 1211 changes this by adding a new definition stating, “livable space” means a space in a dwelling intended for human habitation, including living, sleeping, eating, cooking, or sanitation.” (See amended Gov. Code, § 66313(e).)

SB 1211 also increases the quantity of detached ADUs that lots with an existing multifamily dwelling can have. Currently, Government Code Section 66323(a)(4)(A) permits lots with an existing or proposed multifamily dwelling to have up to two (2) detached ADUs. Following SB 1211, lots with an existing multifamily dwelling can have up to eight (8) detached ADUs, or as many detached ADUs as there are primary dwelling units on the lot, whichever is less. (See amended Gov. Code, § 66323(a)(4)(A)(ii).) SB 1211 does not alter the number of ADUs that lots with proposed multifamily dwelling can have — they remain limited to two (2) detached ADUs. (See Gov. Code, § 66323(a)(4)(iii).)

### **Letter from the Department of Housing and Community Development (“HCD Letter”)**

The California Department of Housing and Community Development (HCD) conducted a review of the City’s ADU Ordinance No. 4324, adopted on December 19, 2022, and issued a findings letter (Attachment 4) identifying components of the ordinance that do not comply with State ADU and JADU laws. It should be noted that HCD did not conduct an analysis of the City’s most recent ADU standards which were adopted as part of the new zoning code update effective July 31, 2024. Below is a list of the seven (7) issues with ADU Ordinance No. 4324 that HCD has identified and how the City is addressing each issue.

Issue 1 – Urgency Ordinance. The HCD Letter indicates that Attorney General Rob Bonta issued a memo on the use of urgency ordinances as they pertain to housing development issues such as ADUs, admonishing local governments that urgency ordinances are strictly limited to emergency or exigent circumstances.

Resolution. The latest ADU standards will be adopted under a standard ordinance as recommended by the Attorney General. Therefore, the issue raised by HCD is considered addressed.

Issue 2 – Statutory Numbering. The HCD Letter indicates the City’s 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.

Resolution. The new ADU ordinance references the correct Government Code sections.

Therefore, the issue raised by HCD is considered addressed.

Issue 3 – Primary Dwelling Definition. The HCD Letter indicates that the City must amend the definition of “Primary Dwelling Unit” to include both single-family dwellings and multifamily dwellings and must review every reference to “Primary Dwelling Units” within the ordinance to comply with State ADU Law.

Resolution. The new ADU ordinance will remove the definition of Primary Dwelling Unit to avoid any conflict with State law. Therefore, the issue raised by HCD is considered addressed.

Issue 4 – Unit Allowance. The HCD Letter indicates that the City must amend the provision related to “Unit Allowance” as it does not reflect the maximum number of ADUs allowed to be constructed on a single-family property.

Resolution. The provisions related to “Unit Allowance” were removed in their entirety from the current ADU standards in order to avoid any conflict with State law. Therefore, the issue raised by HCD is considered addressed.

Issue 5 – JDAU Rental Terms. The HCD Letter indicates that Government Code Section 66333 does not require rental term minimums for JADUs and therefore such a requirement would be in violation of State JADU Law. The City must amend the ordinance accordingly.

Resolution. The new ADU ordinance will remove any language related to JADU rental terms in its entirety to avoid any conflict with State law. Therefore, the issue raised by HCD is considered addressed.

Issue 6 – Owner Occupancy. The HCD Letter indicates that Ordinance No. 4234 states, “Unless applicable law requires otherwise, all ADUs that are created on or after January 1, 2025 are subject to an Owner-occupancy requirement.” 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...” Therefore, the City must remove this section from the Ordinance.

Resolution. The new ADU ordinance will remove the owner-occupancy requirement for ADUs to avoid any conflict with State law. Therefore, the issue raised by HCD is considered addressed.

Issue 7 – Deed Restriction. The HCD Letter indicates that Ordinance No. 4234 states, “Prior to the issuance of a certificate of occupancy for an ADU or JADU, a deed restriction must be recorded against the title of the property in the County Recorder’s office...” 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...” Therefore, the City must amend the Ordinance to comply with State ADU Law.

Resolution. The latest ordinance removes any language related to requiring the recordation of a deed restriction for ADUs to avoid any conflict with State law. Therefore, the issue raised by HCD is considered addressed. Note that per GC Sec. 66333(c), the city may require the recordation of a deed restriction for JADUs.

### **ADU Permit History**

Below is a summary of permit activity for requests to construct new ADUs. The total number of ADU applications received to date is 937.

2017: 3  
2018: 80  
2019: 107  
2020: 106  
2021: 160  
2022: 179  
2023: 142  
2024: 159

### **NOTICING**

Public noticing was completed in accordance with State law. A hearing for public notice was published on Friday, November 29, 2024 in the Inland Valley Daily Bulletin (Attachment 5).

### **ATTACHMENTS:**

1. Draft Planning Commission Resolution No. 24-028 & Exhibit A
2. SB 1211
3. AB 2533
4. HCD Letter dated 12-19-2022
5. Public Noticing

**DRAFT RESOLUTION NO. 24-028**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF POMONA, CALIFORNIA RECOMMENDING CITY COUNCIL APPROVAL OF CODE AMENDMENT (CODE-001662-2024) AMENDING SECTION 830.A OF THE CITY OF POMONA ZONING AND DEVELOPMENT CODE PERTAINING TO ACCESSORY DWELLING UNIT AND JUNIOR ACCESSORY DWELLING UNIT REGULATIONS IN COMPLIANCE WITH STATE LAW AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA**

**WHEREAS**, in September of 2024, the California Legislature approved, and the Governor signed into law, Assembly Bill 2533 (“AB 2533”); and

**WHEREAS**, among other things, AB 2533 updates existing regulations to: 1) limit how a local agency may deny a permit to legalize an unpermitted ADU or JADU; 2) mandate public-notification requirements about limits on local regulation, substandard-building criteria, and pre-application inspection by a private contractor; and (3) address the scope of city inspections and limits on remedial action; and

**WHEREAS**, in September of 2024, the California Legislature approved, and the Governor signed into law, Senate Bill 1211 (“SB 1211”); and

**WHEREAS**, among other things, SB 1211 updates existing regulations to: 1) prohibit local agencies from requiring replacement parking when an uncovered parking space is demolished for or replaced with an ADU; 2) add a definition for the term “livable space”; and 3) increase the quantity of detached ADUs that lots with an existing multifamily dwelling can have; and

**WHEREAS**, on December 19, 2022, the City of Pomona adopted Urgency Ordinance No. 4324 amending Section .5809-26 of the City of Pomona Zoning Ordinance pertaining to ADU and JADU regulations and determining the ordinance to be exempt from the California Environmental Quality Act; and

**WHEREAS**, on October 29, 2024, the California Department of Housing and Community Development issued a letter to the City of Pomona identifying portions of Ordinance No. 4324 that they consider to be in conflict with State law; and

**WHEREAS**, the City desires to maintain full compliance with State law; and

**WHEREAS**, the City of Pomona has duly initiated Code Amendment (CODE-001662-2024); and

**WHEREAS**, the Planning Commission of the City of Pomona, after giving notices thereof

as required by law, held a public hearing on December 11, 2024 concerning Code Amendment (CODE-001662-2024) and carefully considered all pertinent testimony and the staff report offered in the case as present.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Commission of the City of Pomona as follows:

**SECTION 1.** The Planning Commission hereby finds that the foregoing recitals are true and correct and are incorporated herein as substantive findings of this Resolution.

**SECTION 2.** The Planning Commission, exercising independent judgment, finds and determines that this ordinance is statutorily exempt from the provisions of the California Environmental Quality Act ("CEQA"). Under California Public Resources Code Section 21080.17, the California Environmental Quality Act ("CEQA") does not apply to the adoption of an ordinance by a city or county implementing the provisions of Section 65852.1 or Article 2 (commencing with Section 66314) of Chapter 13 of Division 1 of Title 7 of the Government Code, which is California's Accessory Dwelling Unit and Junior Accessory Dwelling Unit law. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State's Accessory Dwelling Unit law.

**SECTION 3.** Based on consideration of the whole record before it, including but not limited to, the staff report, public testimony received at the public hearing on this matter, and evidence made part of the public record, the Planning Commission hereby finds that the proposed Code Amendment is in the public interest and in the interest of the furtherance of the public health, safety, and welfare and is, as a matter of law, consistent with the Pomona General Plan pursuant to Government Code Section 66319.

**SECTION 4.** For the reasons set forth above, the Planning Commission of the City of Pomona hereby recommends that the City Council approve Code Amendment (CODE-001662-2024), attached hereto as Exhibit A.

**SECTION 5.** The Secretary shall certify to the adoption of this Resolution and forward the original to the City Clerk.

**APPROVED AND ADOPTED THIS 11TH DAY OF DECEMBER, 2024**

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ALFREDO CAMACHO  
PLANNING COMMISSION CHAIRPERSON

**ATTEST:**

\_\_\_\_\_  
ATA KHAN  
PLANNING COMMISSION SECRETARY

**APPROVED AS TO FORM:**

\_\_\_\_\_  
MARCO A. MARTINEZ  
DEPUTY CITY ATTORNEY

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES ) ss  
CITY OF POMONA )

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

Pursuant to Resolution No. 76-258 of the City of Pomona, the time in which judicial review of this action must be sought is governed by California Code of Civil Procedure Section 1094.6.



**EXHIBIT A**

830.A. Accessory Dwelling Units

1. Purpose and Intent

The purpose of this section is to regulate Accessory Dwelling Units in accordance with the California Government Code while:

- a. Providing affordable housing to meet the needs of the citizens of Pomona;
- b. Ensuring that the development of ADUs is compatible with existing development;
- c. Preserving the City of Pomona's cultural, historical, and architectural heritage; and
- d. Implementing and promoting the goals and policies of the General Plan

2. Effect of Conforming

An ADU or JADU that conforms to the standards in this section must not be:

- a. Deemed to be inconsistent with general plan and zoning designation for the lot on which the ADU or JADU is located.
- b. Deemed to exceed the allowable density for the lot on which the ADU or JADU is located.
- c. Considered in the application of any local ordinance, policy, or program to limit residential growth.
- d. Required to correct a nonconforming zoning condition, as defined in Sec. 830.A.3. Definitions, below. This does not prevent the City from enforcing compliance with applicable building standards in accordance with the California Health and Safety Code (Sec. 17980.12.).

3. Definitions

The following definitions apply to 830.A. Accessory Dwelling Units:

- a. Accessory Dwelling Unit. An attached or a detached residential dwelling unit that provides complete independent living facilities (permanent provisions for living, sleeping, eating, cooking, and sanitation) for one or more persons and is located on a lot with a proposed or existing primary residence. An ADU also includes the following:
  - 1. An efficiency unit, as defined the California Health and Safety Code (Sec. 17958.1); and
  - 2. A manufactured home, as defined the California Health and Safety Code (Sec. 18007).

- b. Accessory Dwelling Unit, Attached. An ADU that is newly constructed and attached to the primary dwelling. An Attached ADU may be located, in part, within the existing floor area of the primary dwelling.
- c. Accessory Dwelling Unit, Detached. An ADU that is newly constructed and not attached to the primary dwelling. A Detached ADU may be attached to an Accessory Structure (e.g. garage).
- d. Accessory Dwelling Unit, Interior. An ADU that is located entirely within the existing space of a primary dwelling or Accessory Structure.
- e. Accessory Structure. A structure that is accessory to and incidental to that of the primary dwelling and that is located on the same lot.
- f. Crawl Space. An underfloor space that is not a basement as defined in the Code. Any crawl space taller than 36 inches must be included in the calculation of the total floor area for an ADU.
- g. Efficiency Kitchen. A kitchen that includes all of the following:
  - 1. A cooking facility with appliances.
  - 2. A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the JADU.
- h. Junior Accessory Dwelling Unit. A residential unit that satisfies all of the following:
  - 1. It is no more than 500 square feet in size.
  - 2. It is contained entirely within an existing or proposed single-family structure. An enclosed use within the residence, such as an attached garage, is considered to be a part of and contained within the single-family structure.
  - 3. It includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure.
  - 4. If the unit does not include its own separate bathroom, then it contains an interior entrance to the main living area of the existing or proposed single-family structure in addition to an exterior entrance that is separate from the main entrance to the primary dwelling.
  - 5. It includes an efficiency kitchen.
- i. Livable Space. A space in a dwelling intended for human habitation, including living, sleeping, eating, cooking, or sanitation.
- j. Multi-unit Dwelling. Any structure with two or more attached primary dwellings (e.g., apartments, attached townhomes, row houses). A Multi-unit Dwelling may also be referred to as a “primary dwelling.”
- k. Nonconforming Zoning Condition. A physical improvement on a property that does not conform with the current zoning standards.
- l. Passageway. A pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU as defined in the California Government Code (Sec. 66310-66342).
- m. Proposed Dwelling. A dwelling that is the subject of a permit application and that meets the requirements for permitting.
- n. Public Transportation. A location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

- o. Tandem Parking. Two or more automobiles parked on a driveway or in any other location on a lot, lined up behind one another as defined in the California Government Code (Sec. 66313(i).)

4. Ministerial Approvals

The following approvals apply to ADUs and JADUs under this section.

- a. Type 1 – Building Permit Only. If an ADU or JADU complies with each of the general requirements in Sec. 830.A.5. General ADU and JADU Requirements, below, it is allowed with only a building permit in the following scenarios:
  - 1. Interior ADU on a Single-Unit Lot
    - i. One Interior ADU and one JADU on a lot with a proposed or existing single-unit dwelling on it, where the ADU or JADU:
      - ii. Is either within the space of a proposed primary dwelling;
      - iii. Within the existing space of a primary dwelling; or
      - iv. In the case of an ADU only, within the existing space of an Accessory Structure, plus up to 150 additional square feet if the expansion is limited to accommodating ingress and egress.
        - a) An existing, Accessory Structure of any size may be converted to an Interior ADU.
        - b) Any proposed expansions greater than the 150 additional square feet limited to accommodating ingress and egress are not permitted.
    - v. Has exterior access that is independent of that for the primary dwelling.
    - vi. Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes.
    - vii. In the case of a JADU, it must comply with the requirements of the California Government Code (Sec. 66310-66342).
  - 2. Limited Detached ADU on Single-Unit Lot. One detached, new construction ADU on a lot with a proposed or existing primary dwelling (in addition to any JADU that might otherwise be established on the lot under Sec. 830.A.4.a.1. Interior ADU on a Single-Unit Lot, above, if the Detached ADU satisfies the following limitations:
    - i. The side- and rear-yard setbacks are at least 4 feet.
    - ii. The total floor area is 800 square feet or smaller.
    - iii. The peak height above grade does not exceed the applicable height limit in Sec. 830.A.5.b. Height, below.
  - 3. Interior ADU on Multi-unit Lot. One or more ADUs within portions of an existing Multi-unit Dwelling structure that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each Interior ADU complies with State building standards for dwellings. At least one Interior ADU is allowed within an existing

multi-unit dwelling, up to a quantity equal to 25 percent of the existing multi-unit dwelling units.

4.Limited Detached ADU on Multi-unit Lot.

- i. No more than eight Detached ADUs or a quantity equal to the number of existing multi-unit dwelling units in the structure, whichever is less, on a lot that has an existing Multi-unit Dwelling.
  - ii. No more two Detached ADUs with a proposed Multi-unit Dwelling.
  - iii. Each Detached ADU under this paragraph must satisfy the following limitations:
    - a) The side- and rear-yard setbacks are at least 4 feet. If the existing Multi-unit Dwelling has a rear or side yard setback of less than 4 feet, the City will not require any modification to the Multi-unit Dwelling as a condition of approving the ADU.
    - b) The peak height above grade does not exceed the applicable height limit in Sec. 830.A.5.b. (Height).
- b. Type 2 - Building Permit Only. Except as allowed under Sec. 830.A.4.a. Type 1 – Building Permit Only, above, no ADU may be created without a building permit in compliance with the standards set forth in Sec. 830.A.5. General ADU and JADU Requirements and Sec. 830.A.6. Specific ADU Requirements, below.
- c. Process and Timing
- 1.An application to create an ADU or JADU under this section will be considered and approved ministerially, without discretionary review or a hearing.
  - 2.The City must approve or deny an application to create an ADU or JADU within 60 days from the date that the City receives a completed application. If the City does not approve or deny the completed application within 60 days, the application is deemed approved unless either:
    - i. The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or
    - ii. When the application to create an ADU or JADU is submitted with a permit application to create a new single-family or multi-family dwelling on the lot, the City may delay acting on the permit application for the ADU or JADU until the City approves or denies the permit application to create the new single-family or multi-family dwelling, but the application to create the ADU or JADU will still be considered ministerially without discretionary review or a hearing.
  - 3.If the City denies an application for an ADU or JADU, the City must provide the applicant with a full set of written comments that include, among other things, a list of all the defective or deficient items and a description of how the application may be remedied by the applicant. Notice of the denial and corresponding comments must be provided to the applicant within the 60-day time period established by Sec. 830.A.4.c. Process and Timing.
  - 4.Demolition of Detached Garages. In instances where a detached garage is to be demolished and replaced by an ADU, the application for the demolition of the

garage will be reviewed with the application for the ADU and the permit for the garage demolition and ADU will be issued at the same time.

5. General ADU and JADU Requirements

The following requirements apply to all ADUs and JADUs that are approved under Sec. 830.A.4.a. Type 1 – Building Permit Only or Sec. 830.A.4.b. Type 2 - Building Permit Only:

- a. Zoning
  - 1. An ADU or JADU subject only to a building permit under Sec. 830.A.4.a. Type 1 – Building Permit Only, may be created on a lot in a residential or mixed-use zone.
  - 2. An ADU or JADU subject to a building permit under Sec. 830.A.4.b. Type 2 - Building Permit Only, may be created on a lot that is zoned to allow single unit dwelling residential use or multi-unit dwelling residential use.
- b. Height
  - 1. Except as otherwise provided by Sec. 830.A.5.b.2. and Sec. 830.A.5.b.3. General ADU and JADU Requirements, below, a detached ADU created on a lot with an existing or proposed primary dwelling or Multi-unit Dwelling may not exceed 16 feet in height.
  - 2. A detached ADU may be up to 18 feet in height if it is created on a lot with an existing or proposed primary dwelling or Multi-unit Dwelling that is located within one-half mile walking distance of a major transit stop or a high quality transit corridor, as those terms are defined in the California Public Resources Code (Section 21155), and the ADU may be up to two additional feet in height (for a maximum of 20 feet) if necessary to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.
  - 3. A detached ADU created on a lot with an existing or proposed multistory Multi-unit Dwelling may not exceed 18 feet in height.
  - 4. An ADU that is attached to the primary dwelling may not exceed 25 feet in height or the height limitation imposed by the underlying zone that applies to the primary dwelling, whichever is lower. Notwithstanding the foregoing, ADUs must not exceed two stories.
  - 5. For purposes of this Sec. 830.A.5.b., Height is the vertical distance measured from the adjoining curb level to the highest point of the structure, exclusive of chimneys and ventilators.
- c. Fire Sprinklers
  - 1. Fire sprinklers are only required in an ADU if sprinklers are required in the primary residence. For purposes of this paragraph, in the case of Multi-unit Dwelling, the entire residential structure will be considered the primary residence.
  - 2. The construction of an ADU will not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling or existing multi-unit dwelling.

- d. Rental Term. No ADU may be rented for a term that is shorter than 30 days. This prohibition applies regardless of when the ADU was created.
- e. No Separate Conveyance. Except as otherwise provided in the California Government Code (Sec. 66310-66342), an ADU may be rented, but no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-unit lot) or from the lot and all of the dwellings (in the case of a multi-unit lot).
- f. Septic System. If the ADU or JADU will connect to an on-site water-treatment system, the Owner must include with the application a percolation test completed within the last five years or, if the percolation test has been recertified, within the last 10 years.
- g. Owner-Occupancy. As required by state law, all JADUs are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement of this paragraph does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.
- h. Building and Safety
  - 1. Must Comply with the Building Code Subject to Sec. 830.A.5.i.2. No Change of Occupancy, below, all ADUs and JADUs must comply with all local building code requirements.
  - 2. No Change of Occupancy. Construction of an ADU does not constitute a Group R occupancy change under the local building code, as described in the California Building Code (Sec. 310), unless the building official or Code Enforcement Division officer makes a written finding based on substantial evidence in the record that the construction of the ADU could have a specific, adverse impact on public health and safety. Nothing in Sec. 830.A.5.i.2. No Change of Occupancy prevents the City from changing the occupancy code of a space that was uninhabitable space or that was only permitted for nonresidential use and was subsequently converted for residential use in accordance with this section.

6. Specific ADU Requirements

The following requirements apply only to ADUs that require a building permit under Sec. 830.A.4.b. Type 2 - Building Permit Only, above.

- a. Primary dwelling requirement
  - 1. There must be a primary dwelling located on the same lot as an ADU.
  - 2. Where a primary dwelling does not exist on a lot but is proposed, an ADU may be constructed concurrently with the construction of the primary dwelling.
- b. Unit Size
  - 1. Lots less than 7,200 Square Feet in Area. The maximum size of a detached or attached ADU may not exceed 850 square feet for a studio or one bedroom unit or 1,000 square feet for a unit with two or more bedrooms.

- 2. Lots 7,200 Square Feet in Area or Greater. The maximum size of a detached or attached ADU may not exceed 1,200 square feet.
- 3. Relationship to Other Development Standards. Application of other development standards in Sec. 830.A.6. Specific ADU Requirements, such as lot coverage, might further limit the size of the ADU, but no application of front yard, lot coverage, or open-space requirements may require the ADU to be less than 800 square feet.
- c. Coverage. The maximum coverage of the lot by all structures must not exceed the percentage established by the underlying zoning district.
- d. Yards
  - 1. Front Yard. The minimum front yard for an ADU must be established by the underlying zoning district, subject to Sec. 830.A.6.b.3. Relationship to Other Development Standards), above.
  - 2. Side Yard. The minimum side yard for an ADU must be established by the underlying zoning district or 4 feet, whichever is less.
  - 3. Rear Yard. The minimum rear yard for an ADU must be established by the underlying zoning district or 4 feet, whichever is less.
  - 4. No yard must be required for:
    - i. An existing living area.
    - ii. An existing accessory structure.
    - iii. A structure constructed in the same location and to the same dimensions as an existing structure that is converted to an ADU or to a portion of an ADU.
- e. Landscaping. The minimum landscaping required must be established by the underlying zoning district.
- f. Parking
  - 1. No parking is required for any ADU.
  - 2. If provided, parking spaces must be located on an approved surface only.
  - 3. If provided, parking spaces must have a minimum dimension of 9 feet by 18 feet.
  - 4. Tandem Parking
    - i. If provided, tandem parking spaces must have a minimum dimension of 9 feet by 33 feet.
    - ii. If provided, parking may be provided in yard areas or as Tandem Parking, as defined in Sec. 830.A.3. Definitions.
  - 5. When a garage, carport, covered parking structure, or uncovered parking space is demolished in conjunction with the construction of an accessory dwelling unit or, converted to an accessory dwelling unit, those off-street parking spaces are not required to be replaced.
- g. Architecture. The materials and colors of the exterior, including but not limited to walls, roof, window trim, doors, foundation, exposed rafters, knee braces, and decorative tile, must match the appearance and architectural design of those of the primary dwelling.

- h. Manufactured or Prefabricated Structures. Nothing in this section prohibits the installation of manufactured or prefabricated structures that comply with Sec. 830.A.6.g. Architecture, above.
- i. Exterior access. All ADUs must provide independent access to the exterior of the unit.
- j. Passageways. No Passageway is required in conjunction with the construction of an ADU.
- k. Certificate of Occupancy
  - 1. In no case will an ADU be issued a certificate of occupancy prior to the issuance of a certificate of occupancy for the primary dwelling.
  - 2. A certificate of occupancy may be issued concurrently for both the primary dwelling and the ADU.

7. Fees

- a. Impact Fees
  - 1. No impact fee is required for an ADU that is less than or equal to 749 square feet in area.
  - 2. Any impact fee that is required for an ADU that is 750 square feet or larger in area must be charged proportionately in relation to the square footage of the primary dwelling unit. (E.g., the floor area of the primary dwelling, divided by the floor area of the ADU, times the typical fee amount charged for a new dwelling.) "Impact fee" here does not include any connection fee or capacity charge for water or sewer service.
- b. Utility Fees and Connections
  - 1. If an ADU is constructed with a new single-family home, a separate utility connection directly between the ADU and the utility and payment of the normal connection fee and capacity charge for a new dwelling are required.
  - 2. With exception to Sec. 830.A.7.b.1. Utility Fees and Connections, above, converted ADUs on a single-family lot that are created under Sec. 830.A.4.a.1. Interior ADU on a Single-Unit Lot are not required to have a new or separate utility connection directly between the ADU and the utility. Nor is a connection fee or capacity charge required.
  - 3. With exception to Sec. 830.A.7.b.1. Utility Fees and Connections, all ADUs that are not covered by Sec. 830.A.7.b.2. Utility Fees and Connections require a new, separate utility connection directly between the ADU and the utility.
    - i. The connection is subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU based on either the floor area or the number of drainage- fixture units values, as defined by the Uniform Plumbing Code, upon the water or sewer system.
    - ii. The portion of the fee or charge that is charged by the City may not exceed the reasonable cost of providing this service.

8. Nonconforming Code Conditions, Violations, and Permitted Structures



- a. General. The City will not deny an ADU or JADU application due to a nonconforming zoning condition, building code violation, or unpermitted structure on the lot that does not present a threat to the public health and safety and that is not affected by the construction of the ADU or JADU.
- b. Unpermitted ADUs or JADUs constructed before 2020
  - 1. Permit to Legalize. As required by state law, the City may not deny a permit to legalize an existing but unpermitted ADU or JADU that was constructed before January 1, 2020, if denial is based on either of the following grounds:
    - i. The ADU or JADU violates applicable building standards; or
    - ii. The ADU or JADU does not comply with the California Government Code (Sec. 66310-66342) or Sec. 830.A. Accessory Dwelling Units.
  - 2. Exceptions
    - i. Notwithstanding Sec. 830.A.8.b.1. Permit to Legalize, above, the City may deny a permit to legalize an existing but unpermitted ADU or JADU that was constructed before January 1, 2020, if the City makes a finding that correcting a violation is necessary to comply with the standards specified in Section 17920.3 of the Health and Safety Code.
    - ii. Sec. 830.A.8.b.1. Permit to Legalize, above, does not apply to a building that is deemed to be substandard in accordance with the California Health and Safety Code (Sec. 17920.3.).

9. Discretionary Review

The following provisions only apply to ADUs that do not qualify for ministerial approval under Sec.830.A.1. Purpose and Intent through Sec. 830.A.8. Nonconforming Code Conditions, Violations, and Permitted Structures, above:

- a. Major Certificate of Appropriateness, A Major Certificate of Appropriateness must be required for an ADU that is located on real property that is listed in the California Register of Historical Resources or real property designated as a local historic landmark or within a designated historic district in the following instances in Sec. 830.A.9.a.1. Type 1 – Building Permit Only through Sec. 830.A.9.a.2. Type 2 - Building Permit Only, below. Review under the Major Certificate of Appropriateness must be limited to architecture only.
  - 1.Type 1 - Building Permit Only
    - i. The construction of a new Interior ADU on single-unit lot whose architectural design would have adverse impacts on any real property that is listed in the California Register of Historical Resources or real property designated as a local historic landmark or within a designated historic district.
    - ii. The construction of any new Limited Detached ADU on single-unit lot.
    - iii. The construction of any new Interior ADU on multi-unit lot whose architectural design would have adverse impacts on any real property that is listed in the California Register of Historical Resources.

- iv. The construction of any new Limited Detached ADU on Multi-unit Lot.
- 2.Type 2 - Building Permit Only
- i. The construction of any new Interior ADU with an expansion of any size.
  - ii. The construction of any new Attached ADU.
  - iii. The construction of any new Detached ADU.



## SB-1211 Land use: accessory dwelling units: ministerial approval. (2023-2024)

### As Amends the Law Today

**SECTION 1.** Section 66313 of the Government Code is amended to read:

**66313.** For purposes of this chapter:

(a) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(1) An efficiency unit.

(2) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(b) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(c) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(d) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

*(e) "Livable space" means a space in a dwelling intended for human habitation, including living, sleeping, eating, cooking, or sanitation.*

~~(e)~~ (f) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

~~(f)~~ (g) "Local agency" means a city, county, or city and county, whether general law or chartered.

~~(g)~~ (h) "Nonconforming zoning condition" means a physical improvement on a property that does not conform to current zoning standards.

~~(h)~~ (i) "Objective standards" means standards that involve no personal or 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.

~~(i)~~ (j) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

~~(j)~~ (k) "Permitting agency" means any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.

~~(k)~~ (l) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

~~(h)~~ (m) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

~~(m)~~ (n) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

**SEC. 2.** Section 66314 of the Government Code is amended to read:

**66314.** 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 do all of the following:

(a) 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. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(b) (1) Impose objective standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. These standards shall not include requirements on minimum lot size.

(2) Notwithstanding paragraph (1), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(c) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(d) Require the accessory dwelling units to comply with all of the following:

(1) Except as provided in Article 4 (commencing with Section 66340), the accessory dwelling unit may be rented separate from the primary residence, but shall not be sold or otherwise conveyed separate from the primary residence.

(2) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(3) 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.

(4) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(5) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(6) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(7) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and 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.

(8) Local building code requirements that apply to detached dwellings, except that the construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code (Title 24 of the California Code of Regulations), unless the building official or enforcement agency of the local agency makes a written finding based on substantial evidence in the record that the construction of the accessory dwelling unit could have a specific, adverse impact on public health and safety. Nothing in this paragraph shall be interpreted to prevent a local agency from changing the occupancy code of a space that was uninhabitable space or was only permitted for nonresidential use and was subsequently converted for residential use pursuant to this article.

(9) Approval by the local health officer where a private sewage disposal system is being used, if required.

(10) (A) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(B) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(C) This subparagraph shall not apply to an accessory dwelling unit that is described in Section 66322.

(11) When a garage, carport, ~~or~~ covered parking ~~structure~~ *structure, or uncovered parking space* is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(12) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

(e) Require that a demolition permit for a detached garage that is to be replaced with an accessory dwelling unit be reviewed with the application for the accessory dwelling unit and issued at the same time.

(f) An accessory dwelling unit ordinance shall not require, and the applicant shall not be otherwise required, to provide written notice or post a placard for the demolition of a detached garage that is to be replaced with an accessory dwelling unit, unless the property is located within an architecturally and historically significant historic district.

**SEC. 3.** Section 66323 of the Government Code is amended to read:

**66323.** (a) 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 if all of the following apply:

(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 and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(B) The space has exterior access from the proposed or existing single-family dwelling.

(C) The side and rear setbacks are sufficient for fire and safety.

(D) The junior accessory dwelling unit complies with the requirements of Article 3 (commencing with Section 66333).

(2) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in paragraph (1). A local agency may impose the following conditions on the accessory dwelling unit:

(A) A total floor area limitation of not more than 800 square feet.

(B) A height limitation as provided in subparagraph (A), (B), or (C) of paragraph (4) of subdivision (b) of Section 66321, as applicable.

(3) (A) 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.

(B) 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.

(4) (A) ~~Not (i) -more than two accessory dwelling units-~~ *Multiple accessory dwelling units, not to exceed the number specified in clause (ii) or (iii), as applicable,* that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limitation in subparagraph (A), (B), or (C) of paragraph (4) of subdivision (b) of Section 66321, as applicable, and rear yard and side setbacks of no more than four feet.

*(ii) On a lot with an existing multifamily dwelling, not more than eight detached accessory dwelling units. However, the number of accessory dwelling units allowable pursuant to this clause shall not exceed the number of existing units on the lot.*

*(iii) On a lot with a proposed multifamily dwelling, not more than two detached accessory dwelling units.*

(B) If the existing multifamily dwelling has a rear or side setback of less than four feet, the local agency shall not require any modification of the existing multifamily dwelling as a condition of approving the application to construct an accessory dwelling unit that satisfies the requirements of this paragraph.

*(b) 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).*

~~(b)~~ (c) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

~~(e)~~ (d) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing multifamily dwelling.

~~(d)~~ (e) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this section be for a term longer than 30 days.

~~(e)~~ (f) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

~~(f)~~ (g) Notwithstanding Section 66321 and subdivision (a) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in subdivision (a), and may impose objective standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

**SEC. 4.** *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.*



## AB-2533 Accessory dwelling units: junior accessory dwelling units: unpermitted developments. (2023-2024)

### As Amends the Law Today

**SECTION 1.** Section 66332 of the Government Code is amended to read:

**66332.** (a) Notwithstanding any other law, and except as otherwise provided in subdivision (b), a local agency shall not deny a permit for an unpermitted accessory dwelling unit *or unpermitted junior accessory dwelling unit* that was constructed before January 1, ~~2018~~, 2020, due to either of the following:

(1) The accessory dwelling unit *or junior accessory dwelling unit* is in violation of building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code.

(2) The accessory dwelling unit *or junior accessory dwelling unit* does not comply with this article or *Article 3 (commencing with Section 66333), as applicable, or* any local ordinance regulating accessory dwelling *units or junior accessory dwelling* units.

(b) Notwithstanding subdivision (a), a local agency may deny a permit for an accessory dwelling unit *or junior accessory dwelling unit* subject to subdivision (a) if the local agency makes a finding that correcting the violation is necessary to ~~protect the health and safety of the public or occupants of the structure.~~ *comply with the standards specified in Section 17920.3 of the Health and Safety Code.*

(c) This section shall not apply to a building that is deemed substandard pursuant to Section 17920.3 of the Health and Safety Code.

*(d) A local agency shall inform the public about the provisions of this section through public information resources, including permit checklists and the local agency's internet website, which shall include both of the following:*

*(1) A checklist of the conditions specified in Section 17920.3 of the Health and Safety Code that would deem a building substandard.*

*(2) Informing homeowners that, before submitting an application for a permit, the homeowner may obtain a confidential third-party code inspection from a licensed contractor to determine the unit's existing condition or potential scope of building improvements before submitting an application for a permit.*

*(e) A homeowner applying for a permit for a previously unpermitted accessory dwelling unit or junior accessory dwelling unit constructed before January 1, 2020, shall not be required to pay impact fees or connection or capacity charges except when utility infrastructure is required to comply with Section 17920.3 of the Health and Safety Code and when the fee is authorized by subdivision (e) of Section 66324.*

*(f) Subject to subdivision (c), upon receiving an application to permit a previously unpermitted accessory dwelling unit or junior accessory dwelling unit constructed before January 1, 2020, an inspector from the local agency may inspect the unit for compliance with health and safety standards and provide recommendations to comply with health and safety standards necessary to obtain a permit. If the inspector finds noncompliance with health and safety standards, the local agency shall not penalize an applicant for having the unpermitted accessory dwelling unit or junior accessory dwelling unit and shall approve necessary permits to correct noncompliance with health and safety standards.*

**SEC. 2.** *If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*



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

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October 29, 2024

Anita Gutierrez, Development Services Director  
Planning Department  
City of Pomona  
505 S. Garey Ave.  
Pomona, CA 91769

Dear Anita Gutierrez:

**RE: Review of Pomona'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 Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) Law have been re-numbered (Enclosure 1).

Thank you for submitting the City of Pomona (City) ADU Ordinance No. 4324 (Ordinance), adopted December 19, 2022, 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 in the manner noted 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 November 27, 2024.

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

1. *Urgency Ordinance* – The Ordinance was adopted as an Urgency Ordinance. Please note that Attorney General Rob Bonta issued a memo on the use of Urgency Ordinances as they pertain to housing development issues such as ADUs, admonishing local governments that urgency ordinances are strictly limited to emergency or exigent circumstances. *This memo has been included as an attachment* and HCD encourages the City to review it to maintain consistency with state law.

2. *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.
3. Section .5809-26 C.12 – *“Primary Dwelling” Definition* – The Ordinance defines “Primary Dwelling” as “any legally established, single-unit dwelling, existing or proposed, located on the same lot as an ADU or JADU.” This definition therefore excludes multifamily primary dwellings.

Government Code section 66313, subdivision (a) defines “Accessory Dwelling Unit” as “an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated.” Subdivision (a)(1) begins all of State ADU Law with a reference to “provide for the creation of accessory dwelling units in areas zoned to allow single-family or **multifamily dwelling** residential use...” Later, section 66314, subdivision (d)(2) allows such ADUs anywhere “The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.” The Ordinance must be amended to include multi-family dwellings.

Immediately subsequent to that statement is subdivision (d)(3) which broadly describes where and how a unit may be sited on the lot: “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.” There is no condition in this section regarding the “primary dwelling” format that would limit it to either a single-family or multifamily dwelling.

To understand the meaning of 'primary' in primary dwelling, we can refer to the constituent parts of the phrase. “Dwelling” has the same meaning as California Residential Code Definition: “Any building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.” “Primary” has the plain meaning, according to Webster's dictionary, as "principal", meaning first, or 'original', or 'earlier in time'. “Primary dwelling”, then, is the “principal ‘building that is used for living purposes’”.

All ADUs must be accessory *to* another residence, and as ADUs are permitted with both single-family and multi-family dwellings the term “primary dwelling” refers to both these categories simultaneously. This is in contrast to other parts of State ADU Law, such as section 66323, subdivisions (a)(1) and (a)(2) which specifically refer to “single-family dwelling” and subdivisions (a)(3) and (a)(4) which specifically refer to “multifamily dwellings”.

The City’s definition is inconsistent with State ADU Law and creates several internal inconsistencies and gaps within Ordinance 4324. For example, subdivision (C)(5) defines an Accessory Structure as being “accessory to and incidental to that of the Primary Dwelling Unit”, thereby excluding from this definition any structure that is “accessory to and incidental” to a multifamily unit. As another example, subdivision (F)(14)(a) governs Certificates of Occupancy *only* for ADUs created with “Primary Dwelling Units”.

Therefore, the City must amend the definition of “Primary Dwelling Unit” to include both single-family dwellings and multifamily dwellings and must review every reference to “Primary Dwelling Units” within the Ordinance to reflect State ADU Law.

4. Section .5809-26 D.1.b – *Unit Allowance* – The Ordinance permits, “One detached, new construction ADU on a lot with a proposed or existing Primary Dwelling Unit (in addition to any JADU that might otherwise be established on the lot under subsection (D)(I)(a) “Interior ADU on Single-unit Lot” above)...” This implies that single-family lots may only have a maximum of one ADU and one JADU.

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 section. Therefore, the City must amend the Ordinance to provide for all ADU combinations described in Government Code section 66323.

5. Section .5809-26 E.4 – *JADU Rental Terms* – The Ordinance states, “No ADU or JADU may be rented for a term that is shorter than 30 days.” Government Code section 66333 does not require rental term minimums for JADUs and therefore such a requirement would be in violation of State JADU Law. The City must amend the Ordinance accordingly.
6. Section .5809-26 E.7 – *Owner Occupancy* – The Ordinance states, “Unless applicable law requires otherwise, all ADUs that are created on or after January 1, 2025 are subject to an Owner-occupancy requirement.” 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**..." Therefore, the City must remove this section from the Ordinance.
7. Section .5809-26 E.8 – *Deed Restriction* – The Ordinance states, “Prior to the issuance of a certificate of occupancy for an ADU or JADU, a deed restriction must be recorded against the title of the property in the County Recorder’s office....” 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..." Therefore, the City must amend the Ordinance to comply with State ADU Law.

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>

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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).

HCD appreciates the City efforts provided 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 Mike Van Gorder at [Mikevangorder@hcd.ca.gov](mailto:Mikevangorder@hcd.ca.gov) if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Jamie Candelaria". The signature is written in a cursive, flowing style.

Jamie Candelaria  
Senior Housing Accountability Unit Manager  
Housing Policy Development Division

**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)