

**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



March 24, 2025

Heather Allen,
Acting Planning and Building Director
City of Anaheim
200 S. Anaheim Boulevard
Anaheim, CA 92805

Dear Ted White:

RE: Review of Anaheim's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, §§ 66310 - 66342) and Senate Bill (SB) 9 Ordinance under State SB 9 Law (Gov. Code, §§ 65852.21, 66411.7)

Thank you for submitting the City of Anaheim (City) ADU Ordinance No. 6570 (ADU Ordinance), adopted March 19, 2024, and SB 9 Ordinance No. 6524 (SB 9 Ordinance), adopted January 11, 2022, to the California Department of Housing and Community Development (HCD). HCD has reviewed both the Ordinances and submits these written findings pursuant to Government Code section 66326, subdivision (a) and Government Code section 65585, subdivision (j). HCD finds that the Ordinances do not comply with State ADU, JADU, and SB 9 Laws in the manner noted below. 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 April 23, 2024.

Accordingly, the following identifies portions of the ADU and SB 9 Ordinance that conflict with SB 9 Law.

ADU Findings (Gov. Code, §§ 66310 - 66342)

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 18.38.015 .030 – *Unit Allowance* – The Ordinance states, “No more than one (1) Accessory Dwelling Unit and one (1) Junior Accessory Dwelling Unit shall be allowed on a single lot with a single-family dwelling.” However, Government Code section 66323 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." Subparagraph (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 a list of permitted ADU types indicates 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.

Limiting single-family lots to one ADU would prevent property owners from creating ADUs to which they are entitled under section 66323. Therefore, the City must amend the Ordinance to allow for all permissible ADU combinations.

3. Table 38-A – *Location Constraints* – The Ordinance states detached units under 800 square feet must be, "...no closer to the front property line than the front-most building wall of the main dwelling unit; except for [ADUs] resulting from the conversion of an existing garage, carport or covered parking structure." It later states, "At the discretion of the Planning and Building Director, a modified front setback may be permitted if an applicant can demonstrate that it is not possible to construct an 800 square foot unit outside of the front setback."

However, Government Code section 66321, subdivision (b)(3) prohibits "Any other minimum or maximum size for an accessory dwelling unit, size based upon...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." While jurisdictions can impose front setbacks, they cannot preclude an ADU of 800 square feet or less from existing in the front setback. Furthermore, Government Code section 66316 requires that local ADU Ordinances shall include "...only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units..." Therefore, the discretion of the Planning and Building Director may not apply to the location of an ADU. The City must amend the Ordinance accordingly.

4. Section 18.38.015 .0602 – *Sprinklers* – The Ordinance states, “Accessory Dwelling Units shall not be required to provide fire sprinklers if they are not required for the primary residence.” This satisfies State ADU Law, but Government Code section 66314, subdivision (d)(12) and section 66323, subdivision (c), also require that “The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.” The City must amend the Ordinance to add the additional language.
5. Section 18.38.015 .0702 – *Subjective Language* – The Ordinance states, “The design of an attached Accessory Dwelling Unit or Junior Accessory Dwelling Unit shall be architecturally compatible with the main dwelling unit.” However, Government Code section 66314, subdivision (b)(1) allows local ordinances to apply only “objective standards on accessory dwelling units,” and section 66313, subdivision (h) states, “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.” As there is no objective standard for “architecturally compatible”, the City must remove this language.
6. Section 18.38.015 .090 – *Local Historic Inventory* – The Ordinance states, “An Accessory Dwelling Unit or Junior Accessory Dwelling Unit proposed for any lot that includes a building listed in the National Register of Historic Places, California Register of Historic Places, or the City of Anaheim’s local historic inventory shall conform to the following design standards...” However, Government Code section 66314, subdivision (b)(1) states, “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.” Therefore, local historic registers are not recognized by State ADU Law. The City must remove the reference.
7. Section 18.38.015 .1051 and .120 – *Separate Sale* – The Ordinance prohibits separate sale of an ADU from its primary dwelling. However, Government Code section 66341 creates a narrow exception to allow separate conveyance of an ADU to a qualified buyer if the property was built or developed by a qualified nonprofit corporation, among other things. The City must note the exception.

Additionally, section 66342 gives local jurisdictions the option of adopting an Ordinance to govern separate sale of ADUs pursuant to the Davis-Sterling Common Interest Development Act. The City may wish to consider such an ordinance.

8. Section 18.38.011 .130 – *Legal Establishment* – The Ordinance states, “Accessory Dwelling Units that exist as of the effective date of this section that have previously been legally established may continue to operate as legal nonconforming Accessory Dwelling Units. Any Accessory Dwelling Unit that exists as of the effective date of this section, and has not previously been legally established, is considered an unlawful use, unless the Planning and Building Director determines that the unit meets the provisions of this section.”

However, Government Code section 66332 states, “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 that was constructed before January 1, 2018, due to either of the following: (1) The 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 does not comply with this article or any local ordinance regulating accessory dwelling units.” The City may not use discretion to establish the legality of units that would be subject to Government Code section 66332.

The City should also note that as of January 1, 2025, with the passing of Assembly Bill (AB) 2533 (Chapter 834, Statutes of 2024), this language will change. As of January 1, 2025, Government Code section 66332 will state “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 that was constructed before January 1, 2020, due to either of the following: (1) The 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 does not comply with this article or any local ordinance regulating accessory dwelling units.”

Therefore, the City must remove language that allows the City the discretion to establish the legality of units that would be subject to Government Code section 66332.

9. Section 18.38.015 .1401 – *“Granny Unit”* – The Ordinance states, “Conversion of an existing legal “granny unit” into an Accessory Dwelling Unit shall require that the unit meet the provisions of this Code...” However, any dwelling unit that meets the definition of an accessory dwelling unit under Government Code section 66313, subdivision (a) is an accessory dwelling unit: “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.” The City must amend the Ordinance to refer instead to State ADU Law.

10. Section 18.38.015 .150 – *Approval* – The Ordinance states that an ADU application “...shall be approved within 60 days of receipt; otherwise, the application shall be denied.” However, Government Code section 66317, subdivision (b) requires that “If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subdivision (a), the permitting agency shall, within the time period described in subdivision (a), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.” The City must amend the Ordinance to include the process for denial required in State ADU Law.

SB 9 Findings (Gov. Code, §§ 65852.21; 66411.7)

1. Section 18.38.015 .0502 – *ADU/JADU Preemption* – The ADU Ordinance states that ADUs or JADUs are not permitted “On any parcel that has obtained a permit for a Two-Unit Development or an Urban Lot Split, pursuant to Section [18.38.255](#) (Two-Unit Development and Urban Lot Split).” However, SB 9 does not allow a local agency to preempt ADUs or JADUs on lots that propose or have units permitted pursuant to SB 9 (utilizing section 65852.21) and that do not involve an urban lot split (utilizing section 66411.7). While a local agency is not required to approve ADUs and JADUs on lots that involve both urban lot splits and primary units processed pursuant to SB 9,¹ and the local agency may impose a two unit maximum, inclusive of ADUs and JADUs, on lots created through an urban lot split,² SB 9 does not provide for a limit on the application of ADUs and JADUs on lots that do not involve an urban lot split.³ The ADU Ordinance must be amended to allow ADUs and JADUs on eligible parcels.
2. Section 18.38.255 .0203 – *ADU/JADU Preemption* – The City’s SB 9 Ordinance contains a provision that both precludes ADUs/JADUs and subjects ADUs/JADUs to objective standards contained within the SB 9 ordinance. The SB 9 ordinance defines “Unit” to mean “Any dwelling unit, including, but not limited to, an Accessory Dwelling Unit, Accessory Dwelling Unit–Junior, a Dwellings-Single Family Detached, or a unit created pursuant to a Two-Unit Development.” This definition subjects ADUs/JADUs to a maximum unit count of two and applies standards applicable to SB 9 units to ADUs/JADUs (see Table 38-C). As noted above, SB 9 does not provide for a limit on the application of ADUs and JADUs on lots that do not involve an urban lot split. Additionally, while Government Code section 65852.21, subdivision (b) enables a local agency to impose objective zoning, subdivision, and design review standards, the term “unit,” does not encompass ADUs or JADUs unless specifically identified in SB 9;

¹ Gov Code, § 65852.21, subd. (f).

² Gov Code, § 66411.7, subd. (j)(1).

³ HCD SB 9 Fact Sheet, pg. 7, available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/sb-9-fact-sheet.pdf>.

subdivision (b) does not define “the units” to include ADUs or JADUs.⁴ The SB 9 ordinance must be updated to remove ADUs and JADUs from the definition of “Unit.”

3. Section 18.38.255 .0202 – *SB 9 Unit Allowances* – The SB 9 Ordinance defers to the definition of “Dwelling, Two-Unit Development” in Chapter 18.36 (Types of Uses), where it is defined as “two (2) new units or the addition of one (1) new unit and one existing unit developed under the provisions of Section 18.38.255, each with its own kitchen and bathroom facilities, on a single lot. This classification excludes a single-family dwelling unit with an Accessory Dwelling Unit...” However, Government Code section 65852.21, subdivision (a) states that a local agency must consider “...a proposed housing development containing no more than two residential units...” The phrase “no more than two residential units” means that SB 9 requires the ministerial approval of either one or two residential units, among other provisions of SB 9 that provide that a single unit can be proposed on an eligible lot.⁵ The SB 9 Ordinance must be amended to allow one or two units to be processed and approved pursuant to SB 9.
4. Section 18.38.255 .050 – *Objective Standards* – The SB 9 Ordinance states, “At the discretion of the Planning and Building Director, additional building height may be permitted up to the height limit of the underlying zone if an applicant can demonstrate that additional height is necessary to construct an 800 square foot unit.” However, Government Code section 65852.21, subdivision (i)(2), defines the terms “objective zoning standards,” “objective subdivision standards,” and “objective design review standards” to mean “mean 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.” Phrases such as “at the discretion of the Planning and Building Director” and “may be permitted” introduce personal or subjective judgement by a public official. Additionally, subdivision (b)(2)(A) states that “The local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area.” The SB 9 Ordinance must remove non-objective language such as “at the discretion” and “may permit.” Additionally, the SB 9 Ordinance must allow for any objective zoning, subdivision, or design review standard that would physically preclude the construction of up to two units or result in a unit size of less than 800 square feet to be modified or waived by the local agency in order to facilitate the development of the project.

⁴ Gov. Code, § 65852.21, subd. (b)(2)(A).

⁵ Ibid.

5. Section 18.38.255 .060 – *Setbacks* – The SB 9 Ordinance states that, “Existing structures shall provide a four-foot setback from a new property line for lots greater than 7,200 square feet.” However, Government Code section 66411.7, subdivision (c)(3)(A) states that, “No setback shall be required for an existing structure, or a structure constructed in the same location and to the same dimensions as an existing structure.” The SB 9 Ordinance must be amended to remove required setbacks for existing structures, or a structure constructed in the same location and to the same dimensions as an existing structure.
6. Section 18.38.255 .090 – *Public Hearings* – The SB 9 Ordinance provides that “If a question arises relating to interpretation or applicability of a provision of this section, the matter shall be considered by the Planning Commission as a “Reports and Recommendations” item and determined by resolution.” However, this requirement, in effect, constitutes a public hearing for the project in question or its interaction with the SB 9 Ordinance. Government Code section 65852.21, subdivision (a) states that “A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing” if the development meets specified requirements. The SB 9 Ordinance must remove this provision since it involves a public hearing or review for a project. Additionally, the SB 9 Ordinance must ensure zoning, subdivision, and design review standards 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, pursuant to subdivision (i)(2).
7. Section 18.62.110 .020 – *Objective Standards* – The SB 9 Ordinance states that, “If the Planning and Building Director determines that additional information and review is needed, he or she may require a final plan review.” However, Government Code section 65852.21, subdivision (i)(2), defines the terms “objective zoning standards,” “objective subdivision standards,” and “objective design review standards” to mean “mean 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.” The term “may,” paired with a lack of objective criteria for “final plan review,” introduces personal or subjective judgement by a public official. The SB 9 ordinance must remove non-objective language or replace any non-objective language with objective standards.

Conclusion

ADU Ordinance

Please note that the City has two options in response to this letter.⁶ The City can either amend the Ordinance to comply with State ADU Law⁷ 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.⁸ 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.⁹

SB 9 Ordinance

HCD looks forward to assisting the City in its compliance with state housing laws and reminds the City that HCD has enforcement authority over SB 9, among other state housing laws. Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a city's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law.¹⁰

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 contact Mike Van Gorder, of our staff, at mike.vangorder@hcd.ca.gov if you have any questions or would like HCD's technical assistance in ADU matters. For SB 9 specific questions, please contact Brandon Young, of our staff, at brandon.young@hcd.ca.gov.

Sincerely,



Jamie Candelaria
Senior Program Manager
Housing Policy Development Division

⁶ Gov. Code, § 66326, subd. (c)(1).

⁷ Gov. Code, § 66326, subd. (b)(2)(A).

⁸ Gov. Code, § 66326, subd. (b)(2)(B).

⁹ Gov. Code, § 66326, subd. (c)(1).

¹⁰ Gov. Code, § 65585, subd. (j).