

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

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September 10, 2025

Phil Dunsmore, Community Development Director
Community Development Department
City of Atascadero
6500 Palma Ave
Atascadero, CA 93422

Dear Phil Dunsmore:

**RE: Review of Atascadero's Accessory Dwelling Unit (ADU) Ordinance under
State ADU Law (Gov. Code, §§ 66310 - 66342)**

Thank you for submitting the City of Atascadero (City) ADU Ordinance No. 682 (Ordinance), adopted January 28, 2025, 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 fails to comply with State ADU Laws in the manner noted below. Pursuant to Government Code section 66326, subdivision (b)(1), the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than October 10, 2025.

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

1. Section 9-5.030 (i) – *Deed Restrictions* – The Ordinance requires deed restrictions for ADUs. However, Government Code section 66315 states, “Section 66314 establishes the maximum standards that a local agency shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer.” Deed restrictions do not appear in section 66314, and thus the requirement for deed restrictions for ADUs is inconsistent with State ADU Law. The City must remove this section.
2. Section 9-5.050 (a)(2)(ii) – *Setbacks* – The Ordinance states that for detached units up to 1200 square feet, “...the ADU [must have] a setback of at least 10 feet from side and rear property lines”. However, Government Code section 66314, subdivision (d)(7) requires “...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.” The City must amend the Ordinance to remove this requirement.

3. Section 9-5.050 (b) – *Parking Exceptions* – The Ordinance provides exceptions for parking requirements but omits reference to the conditions of Government Code section 66322, subdivision (a)(6): “When a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit or the parcel satisfies any other criteria listed in this subdivision.” The City must add this language to this section.
4. Section 9-5.050 (f)(2) – *Front Setbacks* – The Ordinance requires “Primary Street Frontage: Twenty-five feet for single-family properties, 15 feet for multifamily properties.” However, Government Code section 66321, subdivision (b)(3) prohibits “Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” The City must provide for this exception consistent with State ADU Law.
5. Section 9-5.050 (h) – *Sprinklers* – The Ordinance requires sprinklers for some units if required in the primary dwelling. However, Government Code section 66314, subdivision (d)(12) states, “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 expand this section to include that ADUs may not trigger the requirement for the installation of sprinklers in the primary dwelling.
6. Section 9-5.050 (i) – *Unit Allowance* – The Ordinance states, “Single-Family Zoned Parcels and Small-Lot Single-Family Subdivisions. One ADU per parcel shall be permitted. If a lot contains the maximum number of allowed dwelling units no additional ADU or JADU shall be allowed.”

However, Government Code section 66323, subdivision (a), states, “Notwithstanding Sections 66314 to 66322, inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following: (1) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling...(A) The accessory dwelling unit or junior accessory

dwelling unit is within the proposed space of a single family dwelling or existing space of a single-family dwelling or accessory structure.” Paragraph (2) permits “[o]ne detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks.” The use of the term “any” followed by a list of permitted ADU types permitted indicate that any of these ADU types can be combined on a lot zoned for single-family dwellings.

This permits a homeowner 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 setback requirements of this section, the local agency cannot deny the application, nor deny a permit for a JADU under this section. This section also requires the ministerial approval of detached ADUs in combination with units created in portions of multifamily primary dwellings that are not used as habitable space. Therefore, the City must amend the Ordinance to provide for all ADU combinations described in Government Code section 66323.

7. Section 9-5.060 (c) – *JADU and Allowances* – The Ordinance states, “If a lot contains the maximum number of allowed dwelling units, no additional ADU or JADU shall be allowed.” As noted above, one JADU must be ministerially approved on a lot with a proposed or existing single-family primary dwelling regardless of the number of housing units on the lot. The City must remove this section.
8. Technical Assistance – *Density* - HCD received an inquiry from the public that the City may require multifamily lots to meet the maximum density through additional multifamily primary dwelling units before allowing ADUs, a requirement that HCD was unable to find in the Ordinance. Upon inquiring with City staff on the issue, HCD received a reply from Phil Dunsmore on August 8, 2025, that “The City’s goal is to ensure maximum development under allowed density and to allow for density bonuses, ADU’s, SB9 units and other flexibility as allowed. It is disingenuous to allow for an “Accessory Dwelling Unit” within a multi-family district when there are many other options available to allow for residential development. The City does not allow for an ADU if there are multiple other options to develop dwelling units of any size or shape within a given property.”

Government Code section 66315 states “Section 66314 establishes the maximum standards that a local agency shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer.” Section 66314 does not allow local jurisdictions to consider primary dwelling unit densities as part of an application

for an ADU. Indeed, section 66314 (c) requires that local ordinances “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.”

Given that most ADUs require ministerial approval and are not precluded by local development standards, the City’s requirement that additional primary units – which may be discretionary in approval and be subject to development standards – be utilized prior to ADUs complicates and delays the development of new housing and may in some cases render it financially infeasible.

Therefore, the City may not require additional primary dwellings as a prerequisite to consider an ADU application; ADUs must be allowed on any lot with existing or proposed residential use, regardless of its current density.

The City has two options in response to this letter.¹ The City can either amend the Ordinance to comply with State ADU Law² or adopt the Ordinance without changes and include findings in its resolution adopting the Ordinance that explain the reasons the City believes that the Ordinance complies with State ADU Law despite HCD’s findings.³ 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.⁴

HCD appreciates the City’s efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please feel free to contact Mike Van Gorder at Mike.VanGorder@hcd.ca.gov if you have any questions.

Sincerely,



Jamie Candelaria
Section Chief, ADU Policy
Housing Policy Development Division

¹ Gov. Code, § 66326, subd. (c)(1).

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

³ Gov. Code, § 66326, subd. (b)(2)(B).

⁴ Gov. Code, § 66326, subd. (c)(1).