

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

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February 6, 2025

Anthony Shute, Director of Community Development
Planning Department
City of El Cajon
200 Civic Center Way
El Cajon, CA 92020

Dear Anthony Shute:

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

Thank you for submitting the City of El Cajon (City) accessory dwelling unit (ADU) Ordinance No. 5142 (Ordinance), adopted May 28, 2024, 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 and junior accessory dwelling unit (JADU) Laws in the manner noted below. Pursuant to Government Code section 66326, subdivision (b)(1), the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than March 8, 2025.

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

1. *Senate Bill (SB) 1211 (Chapter 296, Statutes of 2024)* – As of January 1, 2025, there are changes to Government Code section 66323. Subdivision (a)(4)(A)(ii), now allows for up to eight detached ADUs to be created on a lot with an existing multifamily dwelling, provided that the number of ADUs does not exceed the number of existing units on the lot, and up to two detached ADUs on a lot with a proposed multifamily dwelling. Additionally, subdivision (b) now states, “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).” Therefore, the City must adjust the Ordinance to account for these changes.
2. *Assembly Bill (AB) 2533 (Chapter 834, Statutes of 2024)* - As of January 1, 2025, there are changes to Government Code section 66332. Subdivisions (a) and (b) were changed and subdivisions (d) – (f) were added. Changes include to

permitting previously unpermitted ADUs, adding the same protections for JADUs, and setting additional requirements for local agencies. The City should review these new requirements and adjust the Ordinance to comply with State ADU Law.

3. *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.
4. 17.140.180 B.1 – *Unit Allowance* – The Ordinance states, “For each eligible single-family lot, up to one (1) accessory dwelling unit and one (1) junior accessory dwelling unit may be permitted with an existing or proposed single-family dwelling unit.”

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 indicate that any of these ADU types can be combined on a lot zoned for single-family dwellings.

This permits a homeowner, who meets the 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 setback requirements of 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. 17.140.180 C.2 – *Maximum Size* – The Ordinance states “For each eligible lot, the maximum size of an attached or detached accessory dwelling unit shall be not more than one thousand two hundred (1,200) square feet of habitable space, but under no circumstances shall the attached or detached accessory dwelling unit be larger than the primary dwelling unit when including attached non habitable spaces such as garages.” 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.” Therefore, restricting an ADU to less than the size of a primary may result in inconsistency with State ADU Law should the primary dwelling be less than 800 square feet. Additionally, local development standards such as maximum sizes may not preclude any unit created subject to Government Code section 66323. The City must amend the Ordinance to note the exceptions.

6. 17.140.180 D.1 – *Parking Exceptions* – The Ordinance lists six conditions under which parking is not required for an ADU but omits reference to the conditions listed in 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 amend the Ordinance to include all parking exceptions provided by State ADU Law.
7. 17.140.180 E.2.a – *Local Development Standards* – The Ordinance requires, for detached ADUs, “conformity with all requirements of the zone in which the unit is located, except as identified in paragraphs (2)(b) through (g), below.” However, local development standards pursuant to Government Code sections 66314 through 66322 may not preclude any unit created subject to section 66323. The City must amend the Ordinance to note the exceptions.
8. 17.140.180 E.2.d and E.3.d – *Sprinklers* – The Ordinance states, “In accordance with the California Health and Safety Code requirement, no fire sprinkler system is required unless provided for the primary dwelling unit.” However, Government Code section 66314, subdivision (d)(12), expands on this to state “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 add this language to the Ordinance to comply with State ADU Law.
9. 17.140.180 E.3.b – *Attached ADU Height* – The Ordinance states that attached units are “Limited to the maximum height of the underlying zone when located within the primary dwelling unit setback requirements and to a maximum height of twenty (20) feet with a five (5) foot setback; no more than sixteen (16) feet with four (4) foot setback, and no more than twelve (12) feet with a three (3) foot setback.” However, Government Code section 66321, subdivision (b)(4)(D)

states, “A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling.” The height maximum requirements apply irrespective of setbacks, and so as written the Ordinance is inconsistent with State ADU Law. The City must amend the Ordinance to ensure building heights are not unduly restrictive.

10.17.140.180 E.4.a – *JADUs and Attached Garages* – The Ordinance states that JADUs “Shall be created within the existing walls of the primary dwelling unit.” However, Government Code section 66333, subdivision (d) expands on this allowance to state, “For purposes of this subdivision, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” Therefore, the City must amend the Ordinance to include attached garages as part of the proposed or existing single-family residence.

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
Senior Housing Accountability Manager
Housing Policy Development Division

¹ Gov. Code, § 66326, subd. (b)(2).

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

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

⁴ Gov. Code, § 66326, subd. (c)(1).

State ADU/JADU Law Statutory Conversion Table

New Government Code Sections	Previous Government Code Sections
Article 1. General Provisions	
66310	65852.150 (a)
66311	65852.150 (b)
66312	65852.150 (c)
66313	General Definition Section 65852.2 (j) 65852.22 (j)
Article 2. Accessory Dwelling Unit Approvals	
66314	65852.2(a)(1)(A), (D)(i)-(xii), (a)(4)-(5)
66315	65852.2 (a)(8)
66316	65852.2 (a)(6)
66317	65852.2 (a)(3), (a)(7)
66318	65852.2 (a)(9), 65852.2 (a)(2)
66319	65852.2 (a)(10)
66320	65852.2 (b)
66321	65852.2 (c)
66322	65852.2 (d)
66323	65852.2 (e)
66324	65852.2 (f)
66325	65852.2 (g)
66326	65852.2 (h)
66327	65852.2 (i)
66328	65852.2 (k)
66329	65852.2 (l)
66330	65852.2 (m)
66331	65852.2 (n)
66332	65852.23.
Article 3. Junior Accessory Dwelling Units	
66333	65852.22 (a)
66334	65852.22 (b)
66335	65852.22 (c)
66336	65852.22 (d)
66337	65852.22 (e)
66338	65852.22 (f)-(g)
66339	65852.22 (h)
Article 4. Accessory Dwelling Unit Sales	
66340	65852.26 (b)
66341	65852.26 (a)
66342	65852.2 (a)(10)