

**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.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

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).

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 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Jamie Candelaria".

Jamie Candelaria
Senior Housing Accountability Unit Manager
Housing Policy Development Division

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)