

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

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April 22, 2026

Gabriel Elliott, Director
Department of Community Development and Housing
City of San Bernardino
201 North E Street, 3rd Floor
San Bernardino, CA 92401

Dear Gabriel Elliott:

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

Thank you for submitting the City of San Bernardino (City) ADU Ordinance No. MC-1659 (Ordinance), adopted February 4, 2026, to the California Department of Housing and Community Development (HCD). The Ordinance was received on February 19, 2026. 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 May 21, 2026, with a plan to either amend the current ordinance or adopt a resolution with findings.¹ Responses should be submitted formally on the agency letterhead.

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

1. Section 19.04.030 (2)(P) 4.c.iii.b) – *Approving or Denying Applications* – The Ordinance states: “When an application to create an ADU or JADU is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, the city may delay acting on the permit application for the ADU or JADU until the city acts on the permit application to create the new single-family or multifamily dwelling.” However, the corresponding passage in State ADU Law is phrased differently: “If the permit application to create or serve an accessory dwelling unit is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit until the permitting agency approves or denies the permit application to create the new single-family or multifamily dwelling.”²

¹ Gov. Code, § 66326, subd. (b)(2)(B).

² Gov. Code, § 66317, subd. (a)(3).

The Ordinance uses the phrases “acting on” and “acts on” where statute uses the more specific phrases “approving or denying” and “approves or denies,” to indicate that every complete ADU application must resolve in either an approval or a denial. The City must amend the Ordinance to replace the ambiguous phrases “acting on” and “acts on” with “approving or denying” and “approves or denies,” respectively.

2. Section 19.04.030 (2)(P) 5.a. – *ADU and JADU Combinations* – The Ordinance states: “An ADU and JADU approved under subsection 5.a.i may be combined with an ADU approved under subsection 5.a.ii, and ADUs approved under subsection 5.a.iii may be combined with ADUs approved under subsection 5.a.iv.” However, State ADU Law requires approval of the following ADU formats under Government Code section 66314: “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.”³ Subsections 5.a.i, 5.a.ii, 5.a.iii, and 5.a.iv correspond to paragraphs (1) through (4) of subdivision (a) of Government Code section 66323. While the Ordinance correctly describes the ADU and junior accessory dwelling unit (JADU) combinations that must be permitted under section 66323 (“66323 units”), it is silent on the significant legal fact that an ADU approved under section 66314 may be combined with 66323 units. The City must amend the Ordinance to allow at least one ADU approved pursuant to section 66314 to be combined with the 66323 units, which may be combined on a qualifying lot.
3. Section 19.04.030 (2)(P) 5.a.i.a) – *JADU Requirements* – The Ordinance requires that: “The JADU complies with the requirements of Government Code sections 66333 through 66339.” However, the corresponding passage in State ADU Law states: “The junior accessory dwelling unit complies with the requirements of Article 3 (commencing with Section 66333).”⁴ Article 3 now includes a new code section, Government Code section 66339.5.⁵ The City must amend the Ordinance to reference the whole of Article 3, which currently includes Government Code sections 66333 through 66339.5.
4. Section 19.04.030 (2)(P) 6. – *Standards Applicable to 66323 Units* – The Ordinance states, at the top of subsection 6: “The following requirements apply to all Class 1 and Class 2 ADUs and JADUs.” However, immediately preceding this, in subsection 5.b., the Ordinance states: “Class 2 ADUs are approved under Government Code sections 66314–66322. Except for Class 1 ADUs approved under subsection 5.a. above, all ADUs are subject to the standards set forth in subsections 6 and 7 below.” The Ordinance contradicts itself by stating the “Class 1” ADUs (66323 units) both are and are not subject to the standards in subsection 6. State ADU Law notes: “A local agency shall not impose any objective development or design standard that is

³ Gov. Code, § 66314, subd. (d)(3).

⁴ Gov. Code, § 66323, subd. (a)(1)(D).

⁵ This section was added by SB 543.

not authorized by this section [Government Code section 66323] upon any unit that meets the requirements of any of paragraphs (1) to (4), inclusive, of subdivision (a).⁶ The standards in subsection 6 are appropriate to apply to 66323 units to the extent that they do not exceed the standards allowable under section 66323, but the Ordinance cannot contradict itself regarding which standards apply to 66323 units and create confusion for applicants. The City must amend the Ordinance to resolve this contradiction regarding which standards apply to “Class 1” ADUs to accurately reflect State ADU Law.

5. Section 19.04.030 (2)(P) 6.b.iii. – *Detached ADU Height* – The Ordinance states: “A detached ADU created on a lot with an existing or proposed multifamily dwelling that has more than one story above grade may not exceed 18 feet in height.” However, State ADU Law is phrased differently, prohibiting a local agency from establishing a height limitation that does not allow at least: “A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.”⁷ The Ordinance qualifies the requirement for a multifamily, multistory dwelling with “story above grade,” whereas State ADU Law does not, making the Ordinance more restrictive and noncompliant. The City must amend the Ordinance to delete the phrase “above grade” from the quoted passage above.
6. Section 19.04.030 (2)(P) 6.b.v. – *Definition of Building Height* – The Ordinance states: “For purposes of this subsection 6.b., height is measured from existing legal grade or the level of the lowest floor, whichever is lower, to the peak of the structure.” However, building height is defined differently in the California Building Standards Code (CBSC): “The vertical distance from grade plane to the average height of the highest roof surface.”⁸ To ensure that all local agencies apply State ADU Law consistently, alignment with the CBSC definition of building height in the Ordinance is required. The City must amend the Ordinance to adopt the CBSC definition of building height for ADU purposes.
7. Section 19.04.030(2)(P) 6.e. – *Separate Conveyance* – The Ordinance states: “An ADU or JADU may be rented, but, except as otherwise provided in Government Code section 66341, no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all of the dwellings (in the case of a multifamily lot).” However, State ADU Law also notes: “In addition to the requirement that a local agency allow the separate sale or conveyance of an accessory dwelling unit pursuant to Section 66341, a local agency may also adopt a local ordinance to allow the separate conveyance of the primary dwelling unit and accessory dwelling unit or units as condominiums.”⁹ While the Ordinance is consistent with State ADU Law, HCD encourages the City to allow ADU condominium subdivisions pursuant to Government Code section 66342 as well.

⁶ Gov. Code, § 66323, subd. (b).

⁷ Gov. Code, § 66321, subd. (b)(4)(C).

⁸ 2025 California Building Code, § 202. The same section also defines the term “grade plane.”

⁹ Gov. Code, § 66342.

8. Section 19.04.030 (2)(P) 7.c.ii. – *Conversion ADU Setbacks* – The Ordinance states: “No setback is required for an ADU that is subject to this subsection 7 if the ADU is constructed in the same location and to the same dimensions as an existing structure.” However, the relevant part of State ADU Law specifies: “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.” The Ordinance omits the exception from setback requirements for an ADU that is formed from an existing living area or accessory structure that is converted to an ADU or a portion of an ADU. The City must amend the Ordinance to add this exception.
9. Section 19.04.030 (2)(P) 7.h.v. – *Interior Dimensions and Wall Height* – The Ordinance states: “The interior horizontal dimensions of an ADU must be at least 10 feet wide in every direction, with a minimum interior wall height of seven feet.” However, State ADU Law requires ADUs to comply with: “Local building code requirements that apply to detached dwellings”¹⁰ The California Residential Code regulates the minimum dimensions of habitable rooms and minimum ceiling heights for structures within its scope, including many ADUs.¹¹ The Ordinance is more restrictive than the corresponding Residential Code requirements regarding the minimum ceiling heights for certain rooms and regarding the minimum horizontal dimensions of habitable rooms. These are not local building code requirements; they are local zoning regulations. The City must amend the Ordinance to remove the quoted requirements from the ADU ordinance and specify only local building code requirements.
10. Section 19.04.030 (2)(P) 7.h.vi. – *Direct Line of Sight* – The Ordinance states: “No window or door of the ADU may have a direct line of sight to an adjoining residential property. Each window and door must either be located where there is no direct line of sight or screened using fencing, landscaping, or privacy glass to prevent a direct line of sight.” However, State ADU Law requires development standards on ADUs to be objective and defines objective standards as: “...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.”¹² “Direct line of sight” is ambiguous and leaves applicants to guess what that term means. It provides the option of blocking a direct line of sign with fencing but does not indicate how tall the fencing would have to be or whether it has to be completely opaque. Even if the standard were articulated in an objective manner, it would fail to comply with the general rule that ADU development standards must be reasonable.¹³ San Bernardino is largely characterized by a suburban development pattern in which residential lots are relatively close to each other, making the act of

¹⁰ Gov. Code, § 66314, subd. (d)(8).

¹¹ See §§ R312 & R313 of the California Residential Code for the specific requirements.

¹² Gov. Code, §§ 66313, subd. (i); 66314, subd. (b)(1).

¹³ Gov. Code, § 66311.

looking out a window and the act of looking at another property practically synonymous. ADUs should not be held to such standards when new single-family homes are not. The City must amend the Ordinance to delete the subjective, ambiguous, and unreasonable prohibition on a direct line of sight.

11. Section 19.04.030 (2)(P) 7.h.vii. – *Window Restrictions* – The Ordinance states: “All windows and doors in an ADU less than 30 feet from a property line that is not a public right-of-way line must either be (for windows) clerestory with the bottom of the glass at least six feet above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.” However, as previously noted, ADUs are required to comply with the CBSC, which includes requirements for emergency escape and rescue openings in bedrooms, which must be lower than six feet above the floor.¹⁴ The requirement for frosted or obscure glass is arbitrary, unreasonable and overreaching; once windows are opened, this restriction will be obviated. The City must amend the Ordinance to provide an exception from the clerestory window requirement, to delete the unreasonable requirement for frosted or obscure glass and to reflect the CBSC.
12. Section 19.04.030 (2)(P) 7.j. – *Historic Resources* – The ordinance states: “An ADU that is on or within 600 feet of real property that is listed in the California Register of Historic Resources must be located so as to not be visible from any public right-of-way.” However, State ADU Law expresses the intent of the Legislature: “...provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units or junior accessory dwelling units in zones in which they are authorized by local ordinance.” The requirement that an ADU not be visible from the public right of way within a 600-foot radius around a property on the California Register of Historic Resources is arbitrary, burdensome and unreasonable.¹⁵ The City must amend the ordinance to delete this requirement.
13. Section 19.04.030 (2)(P) 7.k. – *Allowed Stories* – The Ordinance states: “No ADU subject to this subsection 7 may have more than one story, except that an ADU that is attached to the primary dwelling may have the stories allowed under subparagraph 6.b.iv. of this section.” However, State ADU Law provides: “No additional standards, other than those provided in Section 66314, shall be used or imposed.”¹⁶ While Government Code section 66314 allows the regulation of an ADU’s “height,” subject to strict limitations, it does not allow for regulations that limit an ADU to one story, if two stories are feasible consistent with the applicable height

¹⁴ Gov. Code, § 66314, subd. (d)(8) & 2025 California Residential Code, § R319.

¹⁵ For example, at the margin, the City’s regulation implies that an ADU 601 feet of such a property would not affect the historic integrity of the historic resource, whereas an ADU 600 feet from the property would; on what basis, we can only guess. The regulation is improperly governing ADU development on certain properties that have no historic resources, simply because of their proximity to a property with a resource on the California Register.

¹⁶ Gov. Code, § 66315.

limit and the CBSC.¹⁷ The City must amend the ordinance to remove the unlawful prohibition on two-story or second story ADUs.

14. Section 19.04.030 (2)(P) 8.a.i. – *Impact Fees* – The Ordinance states: “No impact fee is required for a JADU or for an ADU that has less than 750 square feet of interior livable space.” However, State ADU Law has different ceilings: “A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit that has 750 square feet of interior livable space or less or a junior accessory dwelling unit that has 500 square feet of interior livable space or less.”¹⁸ The Ordinance allows for impact fees on an ADU with exactly 750 square feet of interior livable space, but State ADU Law does not authorize this limitation. The City must amend the Ordinance to exempt ADUs with 750 square feet of interior livable space, or less, from impact fees, as well as JADUs with 500 square feet of interior livable space or less.
15. Section 19.04.030 (2)(P) 8.a.iii. – *Impact Fees* – The Ordinance states: “Any impact fee that is required for an ADU that has 750 square feet or more of interior livable space must be charged proportionately in relation to the square footage of the primary dwelling unit.” However, as noted in Finding 14 above, “A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit that has 750 square feet of interior livable space or less.”¹⁹ The Ordinance allows for impact fees on an ADU with exactly 750 square feet of interior livable space, but State ADU Law does not. The City must amend the Ordinance to exempt ADUs with 750 square feet of interior livable space, **or less**, from impact fees.
16. Section 19.04.030 (2)(P) 10. – *Discretionary Review* – The Ordinance states: “Any proposed ADU or JADU that would otherwise be allowed under this section but that does not conform to the objective design or development standards set forth in subsections 1 through 9 of this section may be allowed by the city with a conditional use permit, in accordance with the other provisions of this title.” However, State ADU Law requires: “An existing accessory dwelling unit ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this article.”²⁰ Because the City’s Ordinance is out of compliance with State ADU Law, no discretionary review is authorized; rather, the City is required to ministerially approve applications that conform to the standards that the City lawfully imposes, consistent with State ADU Law. Therefore, the City must review all ADU applications ministerially.

¹⁷ Gov. Code, §§ 66314, subd. (b)(1); 66321, subd. (b)(4).

¹⁸ Gov. Code, § 66311.5, subd. (c)(1).

¹⁹ Gov. Code, § 66311.5, subd. (c)(1).

²⁰ Gov. Code, § 66316.

17. *Missing Required Standards* – State ADU Law requires an ADU ordinance to include certain provisions, including requiring ADUs to comply with the following: “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.”²¹ The Ordinance omits this required standard which is relevant in the context of “Class 2” ADUs (i.e., ADUs approved pursuant to Government Code sections 66314-66322).²² The City must amend the Ordinance to add the standard and clarify the allowable configurations of “Class 2” ADUs.

The City has two options in response to this letter.²³ The City can either 1) amend the Ordinance to comply with State ADU Law²⁴ or 2) adopt the Ordinance without changes and include findings in its resolution accompanying the Ordinance that explain the reasons the City believes that the Ordinance complies with State ADU Law despite HCD’s findings.²⁵ If the City fails to take either course of action, or if HCD finds that the newly adopted Ordinance remains out of compliance with State ADU Law despite the City’s findings and explanations, 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.²⁶

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 David Barboza at david.barboza@hcd.ca.gov if you have any questions or wish to discuss any of HCD’s findings.

Sincerely,



Jamie Candelaria
Section Chief, ADU Policy
Housing Accountability Unit

²¹ Gov. Code, § 66314, subd. (d)(3).

²² See section 19.04.030(2)(P) 6..

²³ Gov. Code, § 66326, subd. (c)(1).

²⁴ Gov. Code, § 66326, subd. (b)(2)(A).

²⁵ Gov. Code, § 66326, subd. (b)(2)(B).

²⁶ Gov. Code, § 66326, subd. (c)(1).