

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

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October 6, 2025

Heidi Vonblum, Planning Director
City of San Diego
202 C Street, M.S. 413
San Diego, CA 92101

Dear Heidi Vonblum:

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

Thank you for submitting the City of San Diego's (City) ADU Ordinance No. O-21989 (Ordinance), adopted July 23, 2025, to the California Department of Housing and Community Development (HCD). The Ordinance was received on July 24, 2025. 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 November 5, 2025.

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

1. *Fire Sprinklers* – The City's July 11, 2025, response to HCD's May 30, 2025, ADU Ordinance preliminary review states, "The intent of this language is to address scenarios where a detached ADU structure is permitted with multiple attached ADUs. In such cases, fire sprinklers would be required to comply with the California Building Code's provisions for multifamily buildings." However, this is inconsistent with State ADU Law. Section 141.0302 (a)(6)(C) of the Ordinance remains unchanged. HCD disagrees that fire sprinklers are always required in a structure consisting of multiple ADUs attached to each other. Government Code section 66323, subdivision (d) states: "The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence."

Therefore, the City must amend this section to remove the requirement for fire sprinklers within ADUs constructed under State ADU Law when the primary dwelling on the lot does not require fire sprinklers.

2. *Unit Size* – The City’s response to HCD’s May 30, 2025, ADU Ordinance preliminary review states, “GC 66314 allows cities to set an ADU size maximum of 1,200 square feet...” and “HCD’s interpretation is that detached ADUs on a lot with a multifamily dwelling unit do not have maximum floor area. The City Planning Department requests further clarification and citations to the Government Code so we can better understand this interpretation.” Section 141.0302(b)(7)(B) includes the same language as was cited in HCD’s May 30, 2025, review. An ADU detached from a multifamily dwelling does not have a maximum floor area, because such ADUs are reviewed pursuant to Government Code section 66323, subdivision (a)(4), which does not include size restrictions. Further, Government Code section 66323, subdivision (b) 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 amend the Ordinance to exempt ADUs proposed under Government Code section 66323, subdivision (a) from size limitations which are not imposed within that subdivision.

3. *Fire Separation Distance vs. Setbacks* – The City’s response to findings 8 and 10 of HCD’s May 30, 2025, ADU Ordinance preliminary review states, “The use of the term “may” is intended to provide the Fire Code Official the authority to enforce any separation requirements when needed by law. The intent of this section is to inform applicants that the setbacks outlined for each zone in the municipal code and the ADU setbacks in Chapter 14 may be increased to ensure compliance with applicable fire safety requirements.”

However, sections 141.0302(b)(9)(C)(i) and (b)(9)(D)(i) of the Ordinance both begin with, “For ADU Structures located on a premises outside a High or Very High Fire Hazard Severity Zone....” They go on to state that “the Fire Code Official may require a greater setback to ensure compliance with California Code of Regulations (CCR) Title 14 Section 1276.01 and the International Fire Code (IFC), including section 504.1,” which is codified into the California Fire Code (CFC) through CCR Title 24, Part 9, section 504.1.

CCR section 1276.01 only applies *within* State Responsibility Areas and High or Very Fire Hazard Severity Zones (HFHSZ or VHFHSZ), while these Ordinance provisions apply to areas *outside* an HFHSZ or VHFHSZ. Thus, the Fire Official’s ability to require greater fire separation distances *within* a VHFHSZ does not apply here, because these sections of the Ordinance specifically apply to areas *outside* VHFHSZs.

Additionally, Section 504.1 of the CFC is about points of access, including doors, openings, and walkways. It does not address setbacks or fire separation distances. Thus, again, this section of the CFC does not give the Fire Official authority to require greater fire separation distances, particularly for areas *outside* VHFHSZs, which the Ordinance provisions refer to. HCD also notes that “setbacks” are development standards regulated by State ADU Law, whereas “fire separation distance” is a separate and distinct standard with a specific definition within the Building and Fire Codes. Setbacks are set by law or ordinance, whereas fire separation distances can be variable based on a number of factors, including exterior wall design. By using the terms interchangeably, the City invites confusion about which standards apply to a specific ADU development proposed by an individual applicant. The City should make clear that “setbacks” apply universally as laid out in State ADU Law, whereas “fire separation distances” apply only in specific instances. An ADU applicant subject to a “fire separation distance” should be made aware of that fact, but using the term “setback” in that case is incorrect.

HCD would find the following revisions to the City’s Ordinance compliant with State ADU Law. Deletions are indicated in red strikeout and additions are indicated in *blue italics*.

Ordinance section 141.0302(b)(9)(C)(i):

For ADU *structures* located on a *premises* outside of a High or Very High Fire Hazard Severity Zone, there is no minimum interior side *yard* and rear *yard setbacks*, except that the Fire Code Official may require a greater ~~setback~~ *fire separation distance* to ensure compliance with the *California Building Standards Code, Title 24 of the California Code of Regulations*. ~~California Fire Code, California Code of Regulations (CCR), Title 14, Section 1276.01, and the International Fire Code (IFC), including section 504.1~~

Ordinance section 141.0302(b)(9)(D)(i):

For ADU *structures* located on a *premises* outside of a High or Very High Fire Hazard Severity Zone, there is no minimum interior side *yard* and rear *yard setbacks*, except that the Fire Code Official may require a greater ~~setback~~ *fire separation distance* to ensure compliance with the *California Building Standards Code, Title 24 of the California Code of Regulations*. ~~California Fire Code~~. However, if the side or rear *property line* abuts another *premises* that is residentially zoned or developed with exclusively residential uses, the minimum interior side *yard* and rear *yard setbacks* shall be 4 feet or the minimum *setback* of the applicable base zone, whichever is less, except that the Fire Code Official may require a greater

~~setback fire separation distance~~ to ensure compliance with *California Building Standards Code, Title 24 of the California Code of Regulations. California Fire Code, California Code of Regulations (CCR), Title 14, Section 1276.01, and the International Fire Code (IFC), including section 504.1*

4. *Separate Sale* – The City’s response to HCD’s May 30, 2025, ADU Ordinance preliminary review states that section 141.0302(g)(3)(B) has been removed from the Ordinance. However, this section remains unchanged in the Ordinance and is missing the contents of Government Code section 66341, subdivision (c)(5), regarding separate sale of an ADU with a tenancy in common agreement recorded after December 31, 2021.

Therefore, the City must amend the Ordinance to include the tenancy in common requirements of Government Code section 66341, subdivision (c)(5).

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 accompanying 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 Tyler Galli at tyler.galli@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).