

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

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March 16, 2026

Isidro Figueroa
Community Development Director
Community Development Department
2200 Huntington Drive,
San Marino, CA 91108

Dear Isidro Figueroa:

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

Thank you for submitting the City of San Marino (City) ADU Ordinance No. 0-24-1416 (Ordinance), adopted November 11, 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 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 April 15, 2026 with a plan to either amend the current ordinance or adopt a resolution with findings.¹ Responses should be submitted formally on agency letterhead.

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

1. Please note, recent legislation has amended State ADU Law. Language relevant to these changes should be incorporated into the Ordinance. The bills referenced below are relevant to State ADU Law since the Ordinance was adopted:
 - Assembly Bill (AB) 130 – Effective June 30, 2025
 - AB 462 – Effective October 10, 2025
 - AB 1154 – Effective January 1, 2026
 - Senate Bill (SB) 9 – Effective January 1, 2026
 - SB 543 – Effective January 1, 2026
2. Section 23.01.01.1 and Section 23.02.25.H.13 – *Exterior Access Doors ADUs* – The Ordinance States that the exterior door for an attached ADU “shall be located in a manner that will preserve, to the greatest extent feasible, the privacy of the primary residence and any adjoining residences and, to the greatest extent feasible, shall not be visible from the street.” Later, the ADU Ordinance states,

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

“An ADU shall have a separate exterior access from the primary dwelling unit. The exterior access shall be a standard exterior door and shall be located in a manner that will preserve, the privacy of the primary residence and any adjoining residences and, shall not be visible from the street.” However, State ADU Law prohibits a local agency from imposing objective development or design standards not included in Government Code section 66323 upon ADUs that satisfy the requirements of Government Code section 66323, subdivision (a) (“66323 ADUs”).² Door location is not a standard included in Government Code section 66323. In addition, State ADU Law requires that all design and development standards included in a local ADU Ordinance be objective.³ State ADU Law 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.”⁴ The Ordinance includes requirements for exterior access doors that are subjective. Therefore, the City must amend the Ordinance to establish that 66323 ADUs do not have door design requirements and ensure that all door design requirements for non-66323 ADUs are objective, as defined by State ADU Law.

3. Section 23.01.01.2 – *Converted ADU Definition* – The Ordinance defines a converted ADU to mean an “ADU created within the interior of an existing structure that occupies part of the floor area of the existing structure, as defined in this chapter” (emphasis added). However, State ADU Law establishes that converted ADUs may also be developed within a *proposed* single-family dwelling.⁵ Therefore, the City must amend the definition of ‘Converted ADU’ in the Ordinance to include ADUs that are created within proposed single-family dwellings.
4. Section 23.01.01.3 – *Detached ADU Separation* – The Ordinance defines a detached ADU as “a new ADU that is located on the property such that the unit does not share any walls with the single family dwelling unit or multiple family dwelling unit, and the distance between nearest point of any portion of the unit...shall be located six feet (6') or more from each dwelling, building, and other structure on the property.” However, State ADU Law prohibits a local agency from imposing objective or design standards not included in Government Code section 66323 upon 66323 ADUs.⁶ Government Code section 66323 does not include separation requirements between a detached ADU and either the primary dwelling or other structures on the property. Therefore, the separation requirements for ADUs that comply with Government Code section 66323 must be limited to what is sufficient for fire and safety. The City must amend the

² Gov. Code, § 66323, subd. (b).

³ Gov. Code, § 66314, subd. (b)(1).

⁴ Gov. Code, § 66313, subd. (i).

⁵ Gov. Code, §§ 66314, subd. (d)(3); 66323, subd. (a)(1).

⁶ Gov. Code, § 66323, subd. (b).

Ordinance to exempt 66323 detached ADUs from the requirement that Detached ADUs must be located six feet or more from each dwelling, building, and other structure on the property.

5. Section 23.02.25.E – *Allowable Density* – The Ordinance states, "An accessory dwelling unit may be located on all areas zoned to allow the construction of single-family or multi-family residential dwellings and the site includes a proposed or existing single-family or multi-family dwelling." The Ordinance is silent on two provisions of State ADU Law. Government Code section 66314, subdivision (c) states that a local ADU Ordinance must "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." In addition, Government Code section 66314, subdivision (d)(8) establishes that ADUs do not constitute a Group R occupancy change under the local building code, unless the local agency makes a written finding. Therefore, the City must amend the Ordinance to ensure that the Ordinance establishes that ADUs do not exceed the allowable density for a lot and that ADUs do not constitute a Group R occupancy change, as described in State ADU Law.
6. Section 23.02.25.E.1 – *Allowable ADU Combinations* – The Ordinance states, "One converted ADU, one JADU, and the construction of one ADU may be constructed on a single-family residential lot where the converted ADU, JADU and detached ADU meet the requirements in Government Code Section 66323. For multi-family units, up to one within each unit up to 25 percent of the existing multifamily dwelling units; externally up to 8 detached ADUs on lots with multifamily units, subject to the limitations of Government Code section 66323. The limit on ADUs and JADUs for multi-family lots shall be as set forth in 66323 [sic]". However, this section of the Ordinance does not precisely describe what is allowed by State ADU Law. On a single-family lot, under Government Code section 66323, subdivision (a)(1) and (2) a property owner may create one JADU, one internal conversion ADU, and one detached, new-construction ADU, as specified. These ADUs may be combined with one ADU, created pursuant to Government Code section 66314, which may be detached, attached, or a conversion. On a multifamily lot, under Government Code section 66323, subdivision (a)(3) and (4) a property owner may create one ADU constructed from existing non-livable space (or up to 25 percent of the number of multifamily units), and either two detached ADUs if the multifamily dwelling is existing, or if the multifamily dwelling is proposed, up to eight detached ADUs, not to exceed the number of existing units on the lot. These ADUs may be combined with one ADU, created pursuant to Government Code section 66314, which may be detached, attached, or a conversion. The City must amend the Ordinance to more precisely describe the number and types of ADUs that ADUs may be created in accordance with State ADU Law.

7. Section 23.02.25.F.2 – *JADU Deed Restrictions* – The Ordinance states, "The final recorded deed restriction shall state that: a. The JADU shall not be sold separately from the primary residence. b. If the JADU is rented, it shall not be rented for a period of less than 30 consecutive days. c. Owner-occupancy is required for parcels with a JADU, consistent with the requirements and limitations of Government Code Section 66333(b). However, Government Code Section 66333, subdivision (c) specifies that the deed shall only include both of the following: "(1) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers. (2) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this article." Therefore, the City must amend its ordinance to ensure that JADU deed restriction requirements are consistent with State ADU law.
8. Section 23.02.25.H.1 – *ADU Bedroom Restrictions* – The Ordinance states that "ADUs are limited to a maximum of two bedrooms for lots smaller than 12,000 square feet. ADUs are limited to a maximum of three bedrooms for lots 12,000 square feet and larger. Studio and one-bedroom ADUs shall not exceed 850 square feet of floor area. Two-bedroom ADUs shall not exceed 1,000 square feet of *floor area*. Three-bedroom ADUs shall not exceed 1,200 square feet of *floor area*" (emphasis added). However, State ADU Law prohibits a local agency from imposing objective or design standards not included in Government Code section 66323 upon 66323 ADUs.⁷ Government Code section 66323 does not include bedroom limitations based on lot size or ADU square footage. In addition, Government Code section 66321, subdivision (b), has been updated to establish that a local agency "shall not establish by ordinance... A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following: (A) Eight hundred fifty square feet of *interior livable space*. (B) One thousand square feet of *interior livable space* for an accessory dwelling unit that provides more than one bedroom" (emphasis added). Government Code section 66313, subdivision (e) defines livable space as "a space in a dwelling intended for human habitation, including living, sleeping, eating, cooking, or sanitation." Therefore, the City must amend the Ordinance to exempt 66323 Units from the ADU bedroom restrictions and establish that the bedroom restriction that applies to non-66323 ADUs shall be based on *interior livable space* not *floor area*.
9. Section 23.02.25.H.3 – *Two Story ADUs* – The Ordinance states that a "detached ADU shall not exceed 1,200 square feet of floor area and shall not exceed one story and/or 16 feet in height on a lot with an existing or proposed single-family or multi-family dwelling unit." However, State ADU Law states that an ADU Ordinance shall allow at least "a height of 16 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit."⁸ Nothing in State ADU prohibits an ADU from being up

⁷ Gov. Code, § 66323, subd. (b).

⁸ Gov. Code, § 66321, subd. (b)(4)(A).

to two stories, as long as it complies with height limitations in the ADU Ordinance and ceiling height requirements listed in the California Building Standards Code. Therefore, the City must amend the Ordinance to remove the one-story cap on detached ADUs.

10. Section 23.02.25.H.3a – *Detached ADU Heights* – The Ordinance states, “A detached ADU may be up to 18 feet in height if located within one-half mile of a “major transit stop”. However, State ADU Law states that an ADU may also be up to 18 feet for “a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.”⁹ Therefore, the City must amend the Ordinance to include this provision.
11. Section 23.02.25.H.17 – *Garage Demolition* – The Ordinance states that “When the ADU is created by converting or demolishing a garage, carport or covered parking structure, replacement of parking space(s) eliminated by the construction of the ADU shall not be required as long as the ADU remains in use as a legal ADU.” However, State ADU Law also requires that “a demolition permit for a detached garage that is to be replaced with an accessory dwelling unit be reviewed with the application for the accessory dwelling unit and issued at the same time.”¹⁰ Therefore, the Ordinance must be amended to include this requirement.
12. Section 23.02.25.H.17a – *Garage Door Appearances* – The Ordinance states that “When an ADU is created by converting or demolishing a garage, carport, or covered parking structure with an existing door, if the door is visible from the public right-of-way, it must maintain its architectural style to continue to appear as an entrance for vehicles. However, requiring the door to an ADU that is created by converting a garage or other parking structure to maintain the architectural appearance of an entrance for vehicles if the door would be visible from the public-right-of way could unreasonably restrict the ability of homeowners to create an ADU. In addition, Government Code section 66315 states that Government Code 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.” Therefore, the Ordinance must be amended to remove this requirement.

⁹ Gov. Code, § 66321, subd. (b)(4)(C).

¹⁰ Gov. Code, § 66314, subd. (e).

13. Section 23.02.25.H.19 – *Fire Sprinkler Requirements* – The Ordinance states, “The installation of fire sprinklers and fire alarms shall be required if they exist for the primary dwelling unit or if the primary dwelling unit requires fire sprinklers/fire alarms before the issuance of a certificate of occupancy for the ADU.” However, State ADU Law also establishes that the construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.¹¹ The City must amend the Ordinance to specify that the development of the ADU shall not cause fire sprinklers to be required for the existing primary dwelling.
14. Section 23.02.25.I.1 – *JADU Owner Occupancy* – The Ordinance states, “The owner of the single-family dwelling proposed for a JADU shall occupy as a principal residence either the single family dwelling unit, the JADU, or an ADU if one exists on the property. The JADU shall be considered to be in compliance with this code only so long as the owner occupies either the single-family dwelling Unit or the JADU. Notwithstanding subsection 1, owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.” However, Government Code section 66333 (b) has been updated so that owner-occupancy shall only be required if the JADU has separate sanitation facilities. Therefore, the City must update the Ordinance to establish that Owner-occupancy shall only be required when the JADU has shared sanitation facilities with the existing primary structure.
15. Section 23.02.25.K.1 – *Unpermitted ADUs* – The Ordinance states “An ADU or JADU will be found in violation of this section when the dwelling unit has been created without the required City approvals or does not comply with the standards and deed restrictions established.” However, Government Code section 66311.7 states that “a local agency shall not deny a permit for an unpermitted accessory dwelling unit or unpermitted junior accessory dwelling unit that was constructed before January 1, 2020,” as specified. In addition, Government Code section 66331 establishes process for delaying enforcement of a building standard for ADUs that are developed before January 1, 2020, or after January 1, 2020, when the local jurisdiction had a noncompliant ADU ordinance at the time the ADU was built. Therefore, the City must amend the Ordinance to describe both the pathway to compliance created by State ADU Law for ADUs and JADUs constructed before January 1, 2020, and the process for delaying enforcement of a building standard for ADUs.

¹¹ Gov. Code, §§ 66314, subd. (d)(12); 66323, subd. (d).

The City has two options in response to this letter.¹² The City can either 1) amend the Ordinance to comply with State ADU Law¹³ 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.¹⁴ 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 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.¹⁵

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 Auzzie Sheard at Auzzie.Sheard@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

¹² Gov. Code, § 66326, subd. (c)(1).

¹³ Gov. Code, § 66326, subd. (b)(2)(A).

¹⁴ Gov. Code, § 66326, subd. (b)(2)(B).

¹⁵ Gov. Code, § 66326, subd. (c)(1).