

## **ACCESSORY DWELLING UNITS (ADUs)**

Pursuant to **California Government Code section 65852.150**, the California Legislature found and declared that, "... among other things, California is facing a severe housing crisis and ADUs are a valuable form of housing that meets the needs of family members, students, the elderly, in-home health care providers, people with disabilities, and others. Therefore, ADUs are an essential component of California's housing supply."

The State sees ADUs as an "innovative and effective option for adding much-needed housing in California." Cities cannot legally deny ADUs and further, **per California Health and Safety Code (HSC), Section 65583(c)(7)**, are required to "develop a plan that incentivizes and promotes the creation of ADUs." State ADU Law and recent changes intend to address barriers, streamline approval, and expand potential capacity for ADUs, recognizing their unique importance in addressing California's housing needs.

### **What are ADUs and JADUs?**

Accessory dwelling units (ADUs) and Junior Accessory Dwelling Units (JADUs) are small, self-contained units with a kitchen, bathroom and sleeping area and can be attached to the main home with a separate entrance or located in the rear of the property or above a garage. Over the years, ADUs have been known by many names: granny flats, in-law units, backyard cottages, secondary units and more.

### **Where in a City are ADUs and JADUs permitted?**

ADUs proposed pursuant to subdivision (e) of **Government Code Section 65852.2** must be permitted in any residential zone where housing is permitted by-right.

### **Are ADUs permitted ministerially?**

Yes. ADUs subject to State ADU Law must be considered, approved, and permitted ministerially, without discretionary action. Development and other decision-making standards must be sufficiently objective to allow for ministerial review.

### **Is there a streamlined permitting process for ADU and JADU applications?**

Yes. ADU or JADU shall be considered and approved ministerially within 60 days from the date the local agency receives a completed application. Although the allowed 60-day review period may be interrupted due to an applicant addressing comments generated by a local agency during the permitting process, additional 60-day time periods may not be required by the local agency for minor revisions to the application. (**Gov. Code § 65852.2, subs. (a)(3) and (b)**).

### **Can minimum lot size requirements be imposed on ADUs? What about lot coverage, floor area ratio, or open space requirements?**

No. While local governments may impose certain development standards on ADUs, these standards shall not include minimum lot size requirements. Further, lot coverage requirements cannot preclude the creation of a statewide exemption.

### **What is a statewide exemption ADU?**

A statewide exemption ADU, found in **Government Code section 65852**, subdivision (e), is an ADU of up to 800 square feet, 16 feet in height, as potentially limited by a local agency and with four-foot side and rear-yard setbacks. State ADU Law requires that no lot coverage, floor area ratio, open space, or minimum lot size will preclude the construction of a statewide exemption ADU. **Further, State ADU Law allows the construction of a detached new construction statewide exemption ADU to be combined on the same lot with a JADU in a single-family residential zone.** In addition, ADUs are allowed in any residential or mixed uses regardless of zoning and development standards imposed in an ordinance.

### **Is there a minimum and maximum size for ADUs?**

Yes. The maximum unit size is 1,200 square feet for a new detached ADU and up to 50% of the floor area of the existing primary dwelling for an attached ADU (at least 800 square feet).

### **Are certain ADUs exempt from parking requirements?**

Yes. A local agency shall not impose ADU parking standards for any of the following ADUs, pursuant to Government Code section 65852.2, subdivisions (d)(1-5) and (j)(10):

- (1) ADUs located within one-half mile walking distance of public transit.
- (2) ADUs located within an architecturally and historically significant historic district.
- (3) ADUs that are part of the proposed or existing primary residence or an accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the ADU.
- (5) When there is a car share vehicle located within one block of the ADU.

### **Can ADU parking requirements exceed one space per unit or bedroom?**

No. Parking requirements for ADUs shall not exceed one parking space per unit or bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. Guest parking spaces shall not be required for ADUs under any circumstances. For certain ADUs, pursuant to Government Code section 65852.2, subdivisions (d)(1-5) and (j)(10), a local agency may not impose any ADU parking standards (see above question).

### **Is flexibility for siting ADU parking recommended?**

Yes. Local agencies should be flexible when siting parking for ADUs. Off-street parking spaces for the ADU shall be permitted in setback areas in locations determined by the local agency or through tandem parking unless specific findings are made. Specific findings must be based on specific site or regional topographical or fire and life safety conditions.

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU, or converted to an ADU, the local agency shall not require that those off-street parking spaces for the primary unit be replaced. (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi).)

### **Can a limit on the number of bedrooms in an ADU be imposed?**

A limit on the number of bedrooms could be construed as a discriminatory practice towards protected classes such as familial status and would be considered a constraint on the development of ADUs. Building code standards for minimum bedroom size still apply.

### **Can I convert my accessory structure into an ADU?**

Yes. The conversion of garages, sheds, barns, and other existing accessory structures, either attached or detached from the primary dwelling, into ADUs is permitted and promoted through State ADU Law.

### **Are rental terms allowed?**

Yes. Local agencies may require that the property be used for rentals of terms longer than 30 days. ADUs permitted ministerially, under subdivision (e), shall be rented for terms longer than 30 days. (Gov. Code, §65852.2, subds. (a)(6) and (e)(4).)

### **Are there any owner-occupancy requirements for ADUs?**

No. Prior to recent legislation, ADU laws allowed local agencies to elect whether the primary dwelling or ADU was required to be occupied by an owner. The updates to State ADU Law removed the owner-occupancy requirement for newly created ADUs effective January 1, 2020.

### **Can fire sprinklers be required for ADUs?**

Installation of fire sprinklers may not be required in ADUs (attached, detached, or conversion) where sprinklers were not required by building codes for the existing primary residence.

### **Are solar systems required for newly constructed ADUs?**

Yes, newly constructed ADUs are subject to the California Energy Code requirement (excluding manufactured homes) to provide solar systems if the unit(s) is a newly constructed, non-manufactured, detached ADU (though some exceptions apply). Per the California Energy Commission (CEC), the solar systems can be installed on the ADU or on the primary dwelling unit. ADUs that are constructed within existing space or as an addition to existing homes, including detached additions where an existing detached building is converted from non-residential to residential space, are not subject to the Energy Code requirement to provide solar systems.

### **What specifically is a JADU?**

A “junior accessory dwelling unit” or JADU is a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A JADU may include separate sanitation facilities or may share sanitation facilities with the existing structure. (Gov. Code, § 65852.22, subd. (h)(1).)

### **Are there any owner-occupancy requirements for JADUs?**

Yes. The owner must reside in either the remaining portion of the primary residence or in the newly created JADU. (Gov. Code, § 65852.22, subd. (a)(2).)

### **Can my local Homeowners Association (HOA) prohibit the construction of an ADU or JADU?**

No. Assembly Bill 670 (2019) and AB 3182 (2020) amended Section 4751, 4740, and 4741 of the Civil Code to preclude common interest developments from prohibiting or unreasonably restricting the construction or use, including the renting or leasing of, an ADU on a lot zoned for single-family residential use. Covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on such lots are void and unenforceable or may be liable for actual damages and payment of a

civil penalty. Applicants who encounter issues with creating ADUs or JADUs within CC&Rs are encouraged to reach out to HCD for additional guidance. Refer to Section 4100 of the Civil Code for the meaning of a common interest development.

### **Does SB 9 have any impact on ADUs?**

**Senate Bill (SB) 9 (Chapter 162, Statutes of 2021)** requires ministerial approval of a housing development with no more than two primary units in a single-family zone, the subdivision of a parcel in a single-family zone into two parcels, or both. SB 9 facilitates the creation of up to four housing units in the lot area typically used for one single-family home. SB 9 (**Gov. Code Sections 66452.6, 65852.21 and 66411.7**) contains some overlaps with State ADU Law. For details regarding SB9, please see HCDs [SB 9 Factsheet](https://www.hcd.ca.gov/docs/planning-and-community-development/sb9factsheet.pdf)-  
<https://www.hcd.ca.gov/docs/planning-and-community-development/sb9factsheet.pdf>  
[https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB9](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB9).

### **Important Links:**

City of Mission Viejo Municipal Code:

[https://library.municode.com/ca/mission\\_viejo/codes/code\\_of\\_ordinances?nodeId=MUCO\\_TIT9\\_LAUZOSURE\\_CH9.10REZO\\_S9.10.020ZODIDEST](https://library.municode.com/ca/mission_viejo/codes/code_of_ordinances?nodeId=MUCO_TIT9_LAUZOSURE_CH9.10REZO_S9.10.020ZODIDEST)

State HCD Website: <https://www.hcd.ca.gov/policy-and-research/accessory-dwelling-units>

State ADU Handbook (updated 2022): <https://www.hcd.ca.gov/sites/default/files/2022-07/ADUHandbookUpdate.pdf>