

ATTACHMENT A

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT DIVISION OF HOUSING POLICY DEVELOPMENT

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December 10, 2025

Edward Manasse, Deputy Director
Planning and Building
City of Oakland
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Dear Edward Manasse:

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

Thank you for submitting the City of Oakland's (City) ADU Ordinance No. 13856 (Ordinance), adopted July 15, 2025, 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 January 9, 2026.

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

- 1) *Statutory Numbering* – The Ordinance reflects outdated statute numbering (65852.2, etc.) and must be updated to reflect current statute (66310 – 66324).
- 2) Section 17.103.080 A.7 – *Fire Hazard Restrictions* – The Ordinance restricts the number and formats of ADUs within the S-9 combining zone, prohibiting all new construction ADUs and limiting developable conversion units to one ADU or JADU per lot. These restrictions were outlined as inconsistent with State ADU Law in HCD's July 5, 2023 findings letter (see finding #1, [oakland-adu-07052023.pdf](#)) and HCD is concerned that there have been no changes to these restrictions.

Government Code section 66314, subdivision (a) allows local ADU Ordinances to "Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted," and so units created subject to that section may be restricted in this manner. However, Government Code section 66323 acts independently of 66314, stating "Notwithstanding Sections 66314 to 66322,

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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...” Therefore, the City must exempt all units subject to Government Code section 66323 from the S-9 fire hazard restrictions.

- 3) Section 17.103.080 A.9 and A.12.c – *Visibility* – The Ordinance sets several limitations on ADUs and staircases necessary to serve ADUs based on visibility “from the public right of way”. However, “visibility from the public right of way” is a subjective concept, the use of which is inconsistent with Government Code section 66314, subdivision (b)(1), which requires “objective standards” to be applied to ADUs. Additionally, these restrictions may not preclude any unit created subject to Government Code section 66323. The City must remove these restrictions or amend them with objective criteria and apply them only to units subject to Government Code section 66314.
- 4) Section 17.103.080 A.10.a and b – *Subjective Terminology* – The Ordinance uses the terms “predominant” and “visually similar” in describing design standards applicable to ADUs. However, Government Code section 66314, subdivision (b) requires local ordinances to apply only objective standards. The City must remove these terms.
- 5) Section 17.103.080 A.12 and Table 17.103.02 – *Front Setbacks* – The Ordinance requires that no other placement options exist before allowing an ADU in the front setback on a lot with a “California Register Property”¹ and on lots with multifamily primary dwellings. However, Government Code section 66321, subdivision (b)(3), which prohibits front setbacks from precluding a unit up to 800 square feet, does not provide for prerequisites (such as the lack of other placement options) from conditioning such units. The City must amend the Ordinance to provide this exception in both cases.

The City has two options in response to this letter.² The City can either amend the Ordinance to comply with State ADU Law³ 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.⁴ 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.⁵

¹ Please note that this term is undefined; State ADU Law does not refer to a “California Register Property” but to properties on the “California Register of Historical Resources”.

² Gov. Code, § 66326, subd. (c)(1).

³ Gov. Code, § 66326, subd. (b)(2)(A).

⁴ Gov. Code, § 66326, subd. (b)(2)(B).

⁵ Gov. Code, § 66326, subd. (c)(1).

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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 Mike Van Gorder at Mike.VanGorder@hcd.ca.gov if you have any questions.

Sincerely,

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

Jamie Candelaria
Section Chief, ADU Policy
Housing Accountability Unit