



# Development Services Department

## Senate Bill 1226 FAQ

September 2019

The City of Encinitas, like other cities throughout California, is experiencing a shortage of housing for many of its community members. As a result, the City initiated changes in State law to recognize unpermitted housing units. This document provides an overview of this effort.

### WHAT IS SENATE BILL 1226?

On September 30, 2018, Senate Bill 1226, which added Health and Safety Code Section 17958.12, was signed into law. This law confirms that a Building Official has the discretion to apply the building standards that were in effect at the time a residential dwelling unit was constructed or when a structure was converted to a dwelling unit. When a building permit for a dwelling unit does not exist, the Building Official may determine when the unit was built and whether its construction complied with the building standards in place at that time. Based upon that determination a retroactive building permit may be issued.

### WHAT IS ITS APPLICABILITY?

Senate Bill 1226 is applicable to single family homes, duplexes and accessory dwelling units within the City of Encinitas.

### HOW DO I OBTAIN A DETERMINATION?

At the discretion of the Building Official, an applicant may need to secure the services of a California state licensed architect or other licensed professional to assist in this process. The design professional will need to conduct research to identify when the structure is

believed to have been constructed and conduct a site investigation to document the type of construction. The results will function as a “self-certification” by the licensed professional and be submitted to the City as a report and/or plans. The Building Official will then review the material against the applicable building standards and may require a site inspection and/or additional information.

### ARE THERE CRITERIA TO BE MET OR ADDITIONAL REQUIREMENTS FOR THE PERMIT?

In order to be considered habitable and qualifying for a retroactive building permit, the dwelling unit will need to meet various minimum standards. These standards include compliance with the following: providing a fully enclosed shelter from the elements, basic sanitation improvements, running hot and cold water, heating, and a cooking preparation area.

If the Building Official determines that the structure was appropriately constructed under prior building standards, an applicant will be required to complete a building permit application, pay the relevant fee(s), and have any necessary inspections conducted in order to obtain the retroactive building permit.

Although the permit legitimizes the dwelling unit, certain improvements are required in order to comply with basic life and safety requirements. These improvements include, but are not limited to, the installation of smoke alarms, carbon monoxide alarms, and emergency escape and rescue openings.



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### HOW DOES SB 1226 PERTAIN TO FIRE PREVENTION, LAND USE AND ZONING?

The City will also need to confirm if the dwelling complies with Fire Prevention, Land Use and Zoning requirements.

- **Site Plan Requirement:** The applicant will need to provide a site plan identifying the property boundaries, adjacent road(s) and fire access, location of the dwelling unit(s), setbacks to structures, lot coverage by structures, and measurements thereof.
- **Fire Prevention Requirement:** The fire apparatus access/road shall comply with the requirements of CFC Section 503, with local amendments. Access shall extend to within 150 feet of all portions of the facility and all portions of the exterior walls of the first story of the buildings as measured by an approved route around the exterior of the building.
- If the dwelling unit is an Accessory Dwelling Unit it may be able to comply with reduced setback standards. Otherwise it may qualify under the Affordable Unit Policy.

### ACCESSORY DWELLING UNITS (ADUs) AND JUNIOR ACCESSORY DWELLING UNITS (JADUs)

ADUs are attached or detached residential dwelling units, which are secondary in nature to a primary single-family dwelling. Also known as “mother-in-law suites” or “granny flats”, ADUs provide complete independent living facilities for one or more people. ADUs include permanent provisions for sleeping, eating, cooking, and sanitation.

They are permitted in association with a single-family residence, on properties which are zoned for single-family or multi-family use.

A JADU is a residential dwelling unit that is no more than 500 square feet in area, contained entirely within an existing single-family residence, includes one existing bedroom, and can have separate sanitation facilities from, or shared sanitation facilities with, the existing residence.

As of February 14, 2018, the City waived its Building Permit fees for ADUs and JADUs to encourage the construction of these dwellings.

### HOW DOES SB 1226 RELATE TO THE CITY'S AFFORDABLE UNIT POLICY?

SB 1226 could be applied to units currently covered by the City's Affordable Unit Policy (AUP). The City's AUP program, which went into effect on January 1, 1996, provides amnesty to property owners of units that were constructed without building permits. Under the AUP program, units must be brought up to current Building and Fire codes and, in exchange, the unit is restricted through a recorded covenant at an affordable rent to low income households for a period of 20 years. This program was recently extended by City Council through June 16, 2021.

### FOR MORE INFORMATION PLEASE CONTACT:

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