Agenda Item 7A

Approvals:
City Manager
Dept. Head
Attorney
Finance

AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: February 19, 2019

Department: Community Development
Prepared By: Amy Stonich, AICP, Contract Planner

Subject: ***ZONING AMENDMENT 18-243, A CITY-INITIATED AMENDMENT OF SAN CLEMENTE MUNICIPAL CODE TITLE 17 FOR ACCESSORY DWELLING UNITS.***

Fiscal Impact: No impact.

Summary: Staff recommends that Council approve a city-initiated amendment (ZA 18-243) of San Clemente Municipal Code Title 17 for Accessory Dwelling Units (ADUs). The purpose of the zoning amendment is to provide reasonable regulations concerning the development of ADUs within the City. These regulations are intended to comply with State Planning and Zoning Law related to ADUs in residential areas, including California Government Code section 65852.2.

Background: The State of California enacted new laws ("ADU Law")(Senate Bill (SB) 1069, Assembly Bill (AB) 2299, AB 2406, AB 229, AB 494, and AB 2406) to reduce regulations and streamline the approval process to encourage the development of ADUs as affordable housing options to address the statewide housing shortage.

The City has historically permitted ADUs in conformance with State law. In 1988, the City established ADU zoning requirements (SCMC section 17.25.270, Second Residential Dwelling Units) that permit ADUs in Residential Very Low (RVL) and Residential Low (RL) zoning districts east of Interstate-5 (I-5), and prohibited ADUs west of I-5. However, the zoning requirements are preempted until adoption of a zoning amendment that conforms to ADU Law. Since the implementation of the 2017 State ADU Law changes, approximately a dozen ADUs have been processed in the City.

On October 3, 2017, the Council received a report regarding compliance with AB 2299, SB 1069, and AB 2406: Accessory Dwelling Units and Junior Accessory Dwelling Units (Attachment 3). The Council directed staff to prepare a traffic analysis and a zoning amendment to the City's existing ADU ordinance to establish standards which may be incorporated consistent with ADU Law.

As recently amended, ADU Law states ADUs must be allowed in all residential zones that allow single-family residential uses. The City may establish limited ADU standards, including, but not limited to, parking, height, setback, lot coverage, landscaping, architecture, maximum unit size, and standards that prevent adverse impacts on any real property listed in the California Register of Historic Places (only

one property in the City is both zoned for single-family use and listed in the historical register).

The traffic analysis was requested to determine whether new ADUs anticipated from the ADU Law would result in significant adverse traffic impacts compared to long-range (year 2035) traffic conditions based on the 2013 Centennial General Plan. The analysis evaluated traffic impacts based on anticipated development of 123 ADUs by 2035. This statistic of 123 ADUs is based on the housing growth changes anticipated in the Orange County Projections. The Center for Demographic Research (CDR) prepared a set of ADU projections throughout Orange County and projections forecast 123 ADUs potentially being developed in the City of San Clemente by year 2035. This probability of 123 ADUs is consistent with the issuance of permits for ADUs over the past two years in that the CDU statistic anticipates 5.6 ADUs per year and an average of 6 ADUs per year have been issued to date.

The potential traffic impacts of the ADUs in San Clemente were analyzed in the analysis by comparing 2035 traffic conditions with and without the added ADUs. The traffic analysis was completed and the results indicated that traffic generated by ADUs would not significantly impact any City intersections analyzed in the General Plan traffic study. As such, allowing ADUs pursuant to ADU Law would not create new potentially significant impacts related to traffic than those evaluated in the General Plan EIR.

On November 8, 2018, the Planning Commission held a study session and on December 19, 2018, the Planning Commission held a public hearing to consider the draft ADU zoning amendment and traffic analysis findings. The Commission recommended approval of Resolution No. 18-036 recommending that Council adopt the draft ADU zoning amendment (Attachment 4).

Discussion: Since the implementation of ADU law in 2017, City staff has processed ADU proposals in accordance with the new law. The new ADU law is far more permissive than the prior city code restrictions for second residential units in that it allows ADUs citywide and under ADU law standards. The proposed ordinance for ADUs has been drafted to address the limited ADU standards that may be incorporated into local ordinances. Without such an ordinance, ADUs would continue to be processed under ADU law as set forth by the State.

Specifically, the proposed zoning amendment repeals and replaces section 17.28.270 to incorporate Accessory Dwelling Units and modifies Table 17.32.030 Residential Zone Uses, Table 17.64.050 Parking Spaces Required and modifies and adds definitions for consistency with ADU Law. The new ordinance has been drafted to ensure ADUs do not adversely impact either adjacent residential parcels or the surrounding neighborhood within the constraints of ADU Law.

The proposed ordinance includes:

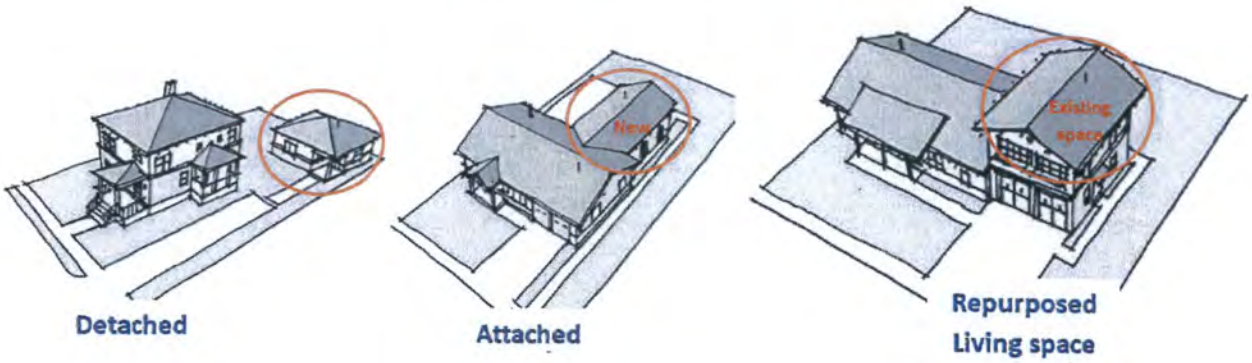
- Permitted locations
- Permit procedures
- Standards for development, occupancy/tenancy, and building and construction

- Parking
- Site development standards including: height, setbacks, unit size and lot coverage
- Deed restriction requirement
- Definitions

Under the proposed zoning amendment, ADUs can only be established on a parcel that allows a single-family dwelling and where a detached single-family dwelling unit exists or is proposed. Generally, ADUs take three forms (referenced in Figure 1). They are either:

- Detached: The unit is separated from the primary residential structure;
- Attached: The unit is attached to the primary residential structure; or
- Repurposed living space: Living area within the primary residence is converted into an independent living unit. Also referred to as "converted ADUs."

Figure 1 – Example of Each ADU Type



- Locations Permitted: The new ordinance will allow ADUs in residential and mixed use zones which allow construction of a detached single family residential unit. The City's ordinance prior to 2017 ADU law limited ADUs to the east side of the 5 freeway. Under current ADU Law, they are allowed in areas zoned to allow single-family or multifamily use.

- Permit procedures: An ADU Permit will be required prior to issuance of permits to construct an ADU for an attached or detached ADU (not repurposed living space).

- Standards for development, occupancy/tenancy, and building and construction:
  a. ADU may not be sold separately;
  b. the property owner must occupy the primary residence or ADU;
  c. may be rented long-term (except where short term rentals are designated); and
  d. must contain provisions for living, sleeping, eating, cooking (a kitchen), and sanitation facilities.

- Parking: One parking space is required, with certain exceptions, such as location within one-half mile of public transit, repurposed living space, or if a city-sanctioned pick-up or drop-off location is within one block (refer to Attachment 2, ADU Transit Coverage).

- Site development standards: Height, setbacks, lot coverage architectural review requirements and unit size. A detached ADU is permitted to be constructed up to 1,200 square feet and an attached ADU is permitted up to 1,200 square feet or 50 percent (50%) of the existing living area of the primary dwelling. An ADU as repurposed living space may be within the same building envelope that the primary dwelling would be permitted, with no limit on ADU size.

- Deed restriction requirement: A deed restriction is recorded on the title so that the ADU cannot be sold separately, is restricted to the approved size, and informs any future owners of the requirements.

- Definitions: New and revised definitions including addition of "accessory dwelling unit" and "kitchen."

In conclusion, the City has historically allowed ADUs and will continue to do so as required by new ADU Law, but now in all areas zoned for single-family use and without discretionary review. The draft zoning amendment includes regulations to maximize compatibility of ADUs with surrounding structures and neighborhoods permitted by ADU law and as recommended by the Planning Commission.

Recommended Action: STAFF RECOMMENDS THAT the City Council:

1. Find and determine that the ordinance is statutorily exempt from the California Environmental Quality Act (CEQA) under Public Resources Code section 21080.17, which exempts from CEQA any ordinance that is adopted to implement Government Code section 65852.1 or 65852.2. This ordinance implements section 65852.2 as amended by Senate Bill (SB) 1069, Assembly Bill (AB) 2299, AB 2406, AB 229, AB 494, and AB 2406.

2. Adopt an ordinance entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, FOR A CITY-INITIATED AMENDMENT (ZA 18-243) OF THE CITY OF SAN CLEMENTE MUNICIPAL CODE TITLE 17 FOR ACCESSORY DWELLING UNITS.

Attachments:
1. Draft Ordinance Amendment
2. ADU Transit Coverage
3. October 3, 2017, City Council Agenda Report
4. December 19, 2018, Planning Commission Staff Report

Notification: An 1/8 page ad was published in the local newspaper.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, FOR A CITY-INITIATED AMENDMENT (ZA 18-243) OF THE CITY OF SAN CLEMENTE MUNICIPAL CODE TITLE 17 FOR ACCESSORY DWELLING UNITS.

WHEREAS, California Government Code, Section 65800 et seq. authorizes the City of San Clemente ("City") to adopt and administer zoning laws, ordinances, rules and regulations as a means of implementing the General Plan;

WHEREAS, the San Clemente Municipal Code currently permits accessory dwelling units ("ADU") (formerly second residential dwelling units) in residential districts, subject to applicable state and federal law;

WHEREAS, the state Legislature has long held that ADUs in single-family and multifamily zones are a valuable way to provide affordable housing in California and, from time to time, changes the statutes related to accessory dwelling units including updates that took effect on January 1, 2017, and January 1, 2018;

WHEREAS, state law requires the City to deem ADUs to be "a residential use that is consistent with the existing general plan and zoning designation" (Gov. Code § 65852.2(a)(1)(C));

WHEREAS, state law makes an ADU a permitted use on any lot that is "zoned to allow single-family or multifamily use and [that] includes a proposed or existing single-family dwelling" (Gov. Code § 65852.2(a)(1)(D)(ii);

WHEREAS, on December 6, 2018, the City gave proper notice of the public hearing for the proposed ordinance by publishing in a newspaper of general circulation notice of a Planning Commission public hearing at which the ordinance would be considered;

WHEREAS, on December 19, 2018, the Planning Commission of the City of San Clemente held a duly noticed public hearing on amendments to San Clemente Municipal Code Title 17 hereinafter referred to as Zoning Amendment ("ZA") 18-243, and considered evidence presented by City staff and other interested parties and made a recommendation to the City Council as fully set forth in this Resolution No. 18-036 relating to ZA 18-243;

WHEREAS, on January 25, 2019, the City gave proper notice of the proposed ordinance by publishing in a newspaper of general circulation notice of the public hearing before the City Council at which the ordinance would be considered; and

WHEREAS, on February 19, 2019, the City Council held a duly noticed public hearing on the subject recommendation, and considered evidence presented by City staff and other interested parties and the recommendation of the Planning Commission.

NOW, THEREFORE, the City Council of the City of San Clemente hereby ordains as follows:

Section 1: CEQA Findings.

Based on its review of the entire record, including the staff report, public comments and testimony presented to the Planning Commission and City Council, and the facts outlined below, the City Council hereby finds and determines that this ordinance has been assessed in accordance with the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines (Cal. Code Regs., § 15000 et seq.) and is statutorily exempt from the CEQA under Public Resources Code section 21080.17, which exempts from CEQA any ordinance that is adopted to implement Government Code section 65852.1 or 65852.2. This ordinance implements section 65852.2. Therefore, this ordinance is statutorily exempt.

The documents and materials that constitute the record of proceedings on which this ordinance and the above findings are based are located at the City of San Clemente, Community Development Department, 910 Calle Negocio, #100, San Clemente, CA 92673. The custodian of records is the Community Development Director.

Section 2: San Clemente Municipal Code, Title 17, is hereby amended as follows:

Section 17.28.270 is repealed in its entirety.

A new Section 17.28.270 is added as follows:

17.28.270 Accessory Dwelling Units.

A. Purpose and Intent. The purpose and intent of this section is to provide reasonable regulations concerning the development of accessory dwelling units ("ADUs") within the City. These regulations in this section are intended to comply with requirements codified in the state Planning and Zoning Law related to ADUs in residential areas, including California Government Code section 65852.2. It is not the intent of this chapter to override lawful use restrictions as may be set forth in any applicable deed restriction or covenant affecting real property.

B. Effect of Conforming Accessory Dwelling Unit. An ADU that conforms to this section is:

1. Deemed an accessory use or an accessory building and is not considered to exceed the allowable density for the lot on which it is located;

2. Deemed a residential use that is consistent with the General Plan and the zoning designations for the lot; and

3. Not considered in the application of any ordinance, policy, or program to limit residential growth.

C. Locations Permitted.

1. An ADU is only permitted on a residentially zoned lot that includes one detached single-family dwelling unit on the lot.

2. Where an ADU is permitted under subsection C.1 above and a "guest house" is also permitted by this Code, only the ADU or the guest house is permitted. The approval or development of one precludes the other.

D. Permit Procedures.

1. Permits.

a. Except as provided in subsection D.1.b below, an ADU is not permitted without each of the following:

(1) an ADU permit,

(2) a building permit as required by the building code, and

(3) a recorded deed restriction as required by subsection F below.

b. Special Exception for Conversions of Existing Legal Living Area Space. An ADU that meets the requirements of subsection E.2 below does not require an ADU permit. It only requires the following:

(1) a building permit as required by the building code and

(2) a recorded deed restriction as required by subsection F below.

2. Application Processing.

a. An application for an ADU permit must be submitted to the City Planner on a form that is prepared and approved by the City Planner. The application must be include all the information and materials that are requested in the approved application form.

b. The City Planner may collect a fee for processing the application provided that the fee is first approved by the City Council through a resolution or ordinance.

3. Review.

a. The City Planner will review complete applications for an ADU permit for compliance with all the requirements of this section,

including those in subsections E (Standards) and F (Deed Restrictions). The ADU permit application shall be considered ministerially without any discretionary review or a hearing.

b. The City Planner shall approve or deny an application for an ADU permit within 120 days after receiving the complete application.

4. Fees.

a. Except as otherwise provided in this section, the construction of an ADU is subject to any applicable fee adopted under California, Title 7, Division 1, Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

b. An ADU that conforms to this section is not considered a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service.

E. Standards.

1. An ADU, except as provided in subsection E.2 below for repurposed living space, must meet the following standards:

a. Development on the Lot.

(1) The accessory dwelling unit must either be:

(a) Detached from the existing primary dwelling, but located on the same lot as the existing dwelling; or

(b) Attached to the existing dwelling.

(2) Only one ADU is allowed on a lot.

(3) The ADU may not be sold separately from the primary residence.

b. Occupancy and Tenancy.

(1) The property owner must occupy either the primary dwelling or the ADU as his or her domicile.

(2) An ADU may be rented long-term (longer than 30 days).The ADU may not be rented on a short-term basis (i.e., for 30 or fewer days) except within those areas that are designated for STLUs, and then only in full compliance with all applicable STLU regulations, including remittance of Transient Occupancy Tax.

c. Building and Construction

(1) An ADU must include permanent provisions for living, sleeping, eating, cooking (a kitchen as defined by this Code), and sanitation facilities (including sink, toilet, bathing facilities).

(2) An ADU must have fire sprinklers if the primary dwelling unit is also required to have fire sprinklers. If the City's Building Code requires a second-story addition to the primary dwelling unit to have fire sprinklers, then an ADU that is built as a second-story addition to the primary dwelling unit is required to have fire sprinklers.

(3) An ADU must be approved by the Local Health Officer if a private sewage-disposal system is used on the lot. If the primary dwelling on the lot is connected to a public or community-owned sewer system, then the ADU must also be connected to the same system.

(4) An ADU must satisfy the requirements of the City's Building and Fire Codes that apply to detached dwellings at the time that the building permit is issued, whether the ADU is a new detached ADU or a new addition to a detached primary dwelling. In the case of the latter, the new addition must comply with current Building and Fire Code regardless of whether the rest of the primary dwelling fully complies with current requirements.

(5) An ADU must have utility connections that conform to the City's building and plumbing requirements. The connections may be separate from or connected to those of the primary dwelling unit, depending on what the code requires.

(6) No passageway shall be required in conjunction with the construction of an ADU. "Passageway" means a pathway that is unobstructed clear to the sky and extends from the street to one entrance of the accessory dwelling unit.

(7) Distance from the Primary Building. A detached ADU shall be a minimum of five feet from the primary building, measured from the closest point of the ADU (whether wall, balcony, eave, etc.) to the closest point of the primary dwelling.

d. Parking.

(1) Except as provided in subsection E.1.d(2) below, ADUs must meet the following parking standards:

(a) One off-street parking space must be provided for the ADU. The property owner may establish the required ADU parking in setback areas or as tandem parking on an existing driveway.

(b) When a garage, carport, or other covered parking structure is demolished or converted for the construction of an ADU, the off-street parking spaces for the primary dwelling must be replaced, the replacement spaces must be located on the same lot but they may be in any configuration that is allowed for an ADU parking space, including, but not limited to, as covered spaces, uncovered spaces, tandem spaces, or by the use of mechanical automobile parking lifts.

(2) Parking standards shall not be imposed on an ADU when:

(a) The ADU is located within one-half mile of public transit stops (bus, rail, or SC Rides); or

(b) The ADU is located within an architecturally or historically significant historic district; or

(c) The ADU is part of the existing primary residence or an existing accessory structure (i.e., is a repurposed living space) as set forth in subsection E.2 below; or

(d) When on-street parking permits are required but not offered to the occupant of the ADU; or

(e) When there is a city-sanctioned, posted car-share pick-up or drop-off location within one block of the ADU.

e. Height.

(1) An ADU shall not exceed the legal conforming height of the existing primary dwelling.

(2) A detached ADU shall not exceed 15 feet in height within 20 feet of another residentially zoned property.

(3) Exception: An ADU that is constructed above a legally established existing garage that is nonconforming as to setback may be up to 25 feet in height or the legal conforming height of the primary dwelling.

f. Setbacks.

(1) No attached or detached ADU may be located within:

(a) 20 feet of the front property line and may not be closer than the living area of the primary dwelling to the front property line;

(b) 10 feet of a side property line;

(c) 10 feet of a rear property line or 20 feet of a rear property line for any through-lot;

(d) 5 feet of any alley;

(e) 25 feet of any coastal bluff, coastal canyon, inland canyon; or

(f) 10 feet from open space zone.

(2) Any portion of a property line that is contiguous with public right of way is deemed a front property line.

(3) Setback Exceptions. The following limited exceptions apply to the setbacks set forth in subsection E.1.f(1) above.

(a) Garage Conversions. No setback is required for a legally established existing garage that is converted to an ADU.

(b) For an ADU that is constructed above a legally established existing garage that is nonconforming as to setback, a minimum setback of five feet is required from the side and rear property lines.

g. Unit Size.

(1) The increased floor area of an attached ADU shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(2) The total floor area of a detached ADU shall not exceed 1,200 square feet.

(3) An ADU that is an efficiency dwelling unit as defined by Section 17958.1 of the California Health and Safety Code shall have a floor area of at least 150 square feet. An ADU that is not an efficiency unit under Section 17958.1 must have a floor area of at least 300 square feet.

h. Lot Coverage. Both the ADU and the primary dwelling shall not exceed a maximum fifty percent (50%) lot coverage.

i. Access. The ADU and primary dwelling must use the same driveway to access the street, unless otherwise required for Fire Apparatus Access, as determined by the fire authority.

j. Architecture Review.

(1) The materials and colors of the exterior walls, roof, and windows and doors must match the appearance and architectural design of those of the primary dwelling.

(2) The roof slope must match that of the dominant roof slope of the primary dwelling. The dominant roof slope is the slope shared by the largest portion of the roof.

(3) The exterior lighting must be limited to shielded-lights or as otherwise required by the building or fire code.

(4) The ADU must have an independent exterior entrance, apart from that of the primary dwelling. The ADU entrance must be located on the side or rear building façade, or if located in front, not visible from public-right-of-way.

(5) The interior horizontal dimensions of an ADU must be at least 10 feet wide in every direction, with a minimum interior wall height of seven feet.

(6) Windows and doors of the ADU may not have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.

(7) The architectural treatment of an ADU to be constructed on a lot that has an identified historical resource listed on the federal, state, or local register of historic places must comply with all applicable ministerial requirements imposed by the Secretary of Interior.

2. A repurposed living space ADU is exempt from the requirements of subsection E.1 above if it meets each of the following requirements:

   a. The ADU is contained entirely within the living area space of the primary dwelling. "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any uninhabitable structure;

   b. The ADU has independent exterior access from the existing residence; and

   c. The setbacks for the ADU are sufficient for fire safety.

3. If the requirements of subsection E.2 above for an ADU in repurposed living space are met, then the applicant:

   a. Is not required to install a new or separate utility connection directly between the ADU and the utility or to pay a related connection fee or capacity charge.

   b. Shall record a deed restriction as provided in subsection F below and obtain a building permit as required by the building code as adopted and amended by Chapter 8.02.

F. Deed Restriction. Prior to issuance of a building permit for an ADU, a deed restriction shall be recorded against the title of the property in the County Recorder's office and a copy filed with the City Planner. Said deed restriction shall run with the land and shall bind all future owners, heirs, successors, or assigns. The form of the deed restriction shall be provided by the City and shall provide that:

1. The ADU may not be sold separately from the primary dwelling.

2. The ADU is restricted to the approved size and to other attributes allowed by this section.

3. The deed restriction runs with the land and may be enforced against future property owners.

4. The deed restriction may be removed if the owner eliminates the ADU. To remove the deed restriction, an owner may make a written request of the City Planner, providing evidence that the ADU has in fact been removed. The City Planner may then determine whether the evidence supports the claim that the ADU has been removed. Appeal may be taken from the City Planner's determination consistent with other provisions of this Code.

5. The deed restrictions shall be enforced by the City Planner or designee for the benefit of the City. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the City is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining use of the ADU in violation of the recorded restrictions or abatement of the illegal unit.

Section 17.32.030, Table 17.32.030 - Residential Zone Uses, is amended as follows:

Use	RVL	RL	RML	RM	RH
~~Second Residential Units (Inland Side of I-5)~~ ~~13~~ Accessory Dwelling Units (13)	P	P	P	P	P

13 Refer to Section 17.28.270, ~~Second Residential~~ Accessory Dwelling Units (ADUs), of this title for special provisions for ~~second residential units~~ADUs.

Table 17.64.050 – Number of Parking Spaces Required is amended as follows:

Use	Number of Parking Spaces Required
~~Second Residential~~Accessory Dwelling Units	Please refer to Section 17.28.270, ~~Second Residential~~ Accessory Dwelling Units.

Section 17.88 (Definitions), is amended to add or modify the following definitions:

"Accessory Dwelling Unit" ("ADU"): A residential dwelling unit that is detached from, attached to, or located within the living area of an existing primary dwelling unit, and that provides complete independent living facilities with permanent provisions for sleeping, eating, cooking, and sanitation facilities for one or more persons. An accessory dwelling unit also includes an efficiency unit, as defined in California Health and Safety Code section 17958.1, and a manufactured home, as defined in section 18007.

"Domicile": A person's fixed, permanent, and principal home for legal purposes.

"Granny Flat": See "Accessory Dwelling Unit".

"Kitchen" means any room or part of a room which is designed, built, used and/or intended to be used for food preparation and/or cooking which contains facilities that include a sink; a stove, oven, range or other similar non-portable cooking device; and a refrigerator.

"Living Area": The interior habitable area of a dwelling unit, including basements and attics, but not including a garage or any uninhabitable structure.

"Second residential unit": See "Accessory Dwelling Unit".

Section 3: If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be invalid or unenforceable, such decision shall not affect the validity or enforceability of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases would be declared invalid or unenforceable.

Section 4: The City Clerk shall certify to the passage of this Ordinance and publish the same in the manner required by law, and this Ordinance shall take effect as provided by law.

APPROVED, ADOPTED AND SIGNED this ____day of ____, 2019.

ATTEST:

City Clerk of the City of San Clemente, California	Mayor of the City of San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. _____ having been regularly introduced at the meeting of __, 2019, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the ____ day of ____, 2019, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this ___ day of ____, 2019.

_____

CITY CLERK of the City of

San Clemente, California

APPROVED AS TO FORM:

_____

CITY ATTORNEY

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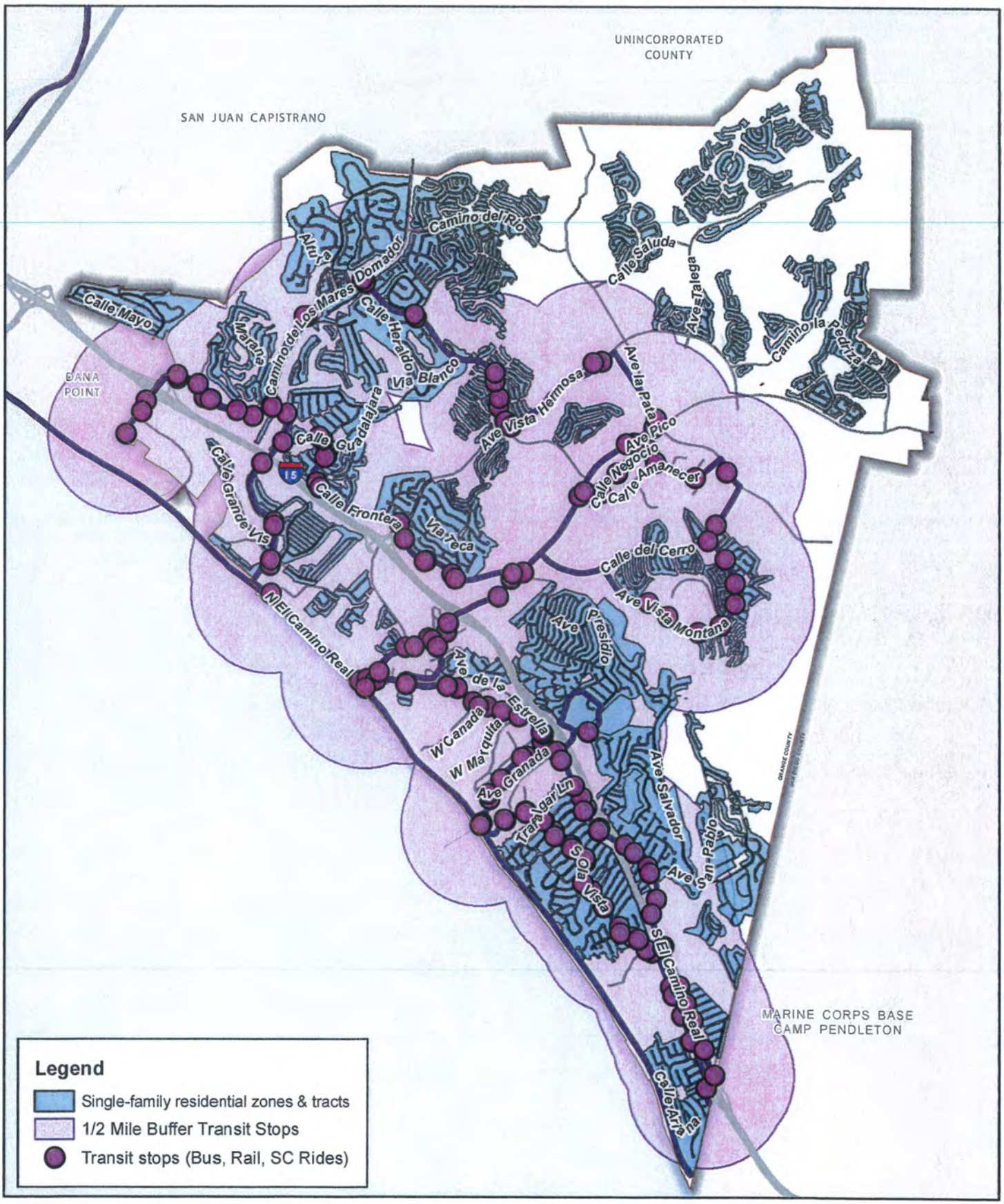
Attachment 2



ADU Analysis City
Transit coverage & Residential Zones

0 0.5 1 Miles

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Agenda Item 9-A

Approvals:
City Manager
Dept. Head
Attorney
Finance

AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: October 3, 2017

Department: Community Development Department, Planning Division
Prepared By: Christopher Wright, Associate Planner CW

Subject: ***COMPLIANCE WITH AB 2299, SB 1069, AND AB 2406: ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS***

Fiscal Impact: No impact unless directed to study the feasibility of restricting accessory units to certain zones. To do this, traffic and sewer capacity studies are required with an estimated cost of approximately $135,000.

Summary: New California laws nullified the City's zoning rules for Accessory Dwelling Units and significantly limit local control over them. To conform to these State laws, it is recommended the City Council: 1) initiate zoning amendments that update the City's regulations to conform to State law and add regulations where feasible, 2) give staff parameters for zoning amendments, and 3) direct staff on whether to initiate a process for consultant traffic and sewer capacity studies.

Background: There is a State shortage of affordable housing because housing production is not keeping pace with demand. To increase supply, the State adopted Assembly Bill 2299, Senate Bill 1069, and Assembly Bill 2406 that went into effect in January 2017. These laws make it easier to construct Accessory Dwelling Units or ADUs, formerly called second residential units, by imposing greater limits on a city's ability to restrict these units. ADUs are attached or detached residential dwelling units that provide complete independent living facilities for living, sleeping, cooking, and sanitation on a single-family residential lot. ADUs can be counted toward the State's required Residential Housing Needs Assessment (RHNA) numbers for affordable units.

Assembly Bill (AB 2299) and Senate Bill 1069 (SB 1069) amend general regulations for ADUs and limit local control of ADUs in several ways. Both of these laws are referred to as AB 2299 in this report. Assembly Bill 2406 (AB 2406) gives cities the option to adopt an Ordinance that creates special rules and added allowances for smaller ADUs, known as Junior Accessory Dwelling Unit or JADUs.

<u>City ADU Ordinance</u>

In 1988, the City adopted Ordinance No. 977 that established zoning requirements for ADUs (identified in the Zoning Ordinance as second residential units). The Zoning Ordinance has allowed ADUs in the Residential Very Low (RVL) and Residential Low zoning (RL) districts inland of the Interstate-5 (I-5), and prohibited ADUs west of I-5. ADUs weren't allowed west of I-5 for the following reasons cited in the 1988 staff report and Ordinance:

- Areas west of the 1-5 freeway are too densely populated in the residential areas.
- The residential lots and streets west of the I-5 freeway are of substandard size.
- At the time, the wastewater treatment plan was approaching capacity and the planned expansion could not accommodate a substantial number of new residential households on existing developed lands.
- Lack of adequate off-street parking within the areas west of the I-5 freeway. Development of ADUs would increase the demand for on-street parking; therefore, possibly causing a dangerous driving condition.

Discussion: **Assembly Bill 2299, Accessory Dwelling Units**

AB 2299 nullifies the City's ADU Ordinance, and requires the City to allow ADUs in residential zones on lots with existing single-family residences, according to State requirements. In several ways, the State's ADU regulations differ from and are not as restrictive as the City's ADU Ordinance.

This includes but isn't limited to limits on a city's ability to restrict where ADUs can occur, development setbacks, maximum size, provision of parking, parking design, rental, the review process, requiring special fees or connections for sewer and water service. Refer to Attachment 1 for a detailed table comparison of State law, the City ADU Ordinance, and areas where State law gives the City discretion to impose requirements on ADUs, if the Zoning Ordinance is updated. Of the legal differences, the State law most significantly changes or affects the City's ability to require parking and restrict the location of ADUs west of I-5. Below is a discussion of these issues.

Parking

Assembly Bill 2299 waives parking for ADUs that comply with any of the following:

- Located within ½ mile of public transit *("public transit" is not defined in the law)*;
- Located within architecturally and historically significant historic district *(terms are not defined, not applicable to City)*;
- The ADU is part of an existing primary residence or an existing accessory structure;
- On-street parking permits are required but not offered to the occupant of the ADU; or
- There is a car share vehicle located within one block of the ADU.

If ADUs don't comply with this criteria, cites may require parking as follows:

- Up to one parking space per unit or per bedroom *(this is not a change in San Clemente. Prior to the State law, a similar amount of parking was required)*;
- Parking spaces may be uncovered, in tandem, and on a driveway *(prior to the State law, this was not allowed)*;

- Parking spaces must be permitted in setback areas, unless it isn't permitted anywhere else in the jurisdiction other areas of the *City (e.g. front yard driveway parking can't meet required parking anywhere in San Clemente, so it also can't for ADUs).*

Using the City's Geographic Information System (GIS), staff was able to confirm a majority of single-family residential lots west of I-5 are located within a ½ mile area of transit stops, including along active bus routes 1 and 91, Metrolink stations (North Beach and Pier Bowl), and designated SC ride Lyft stops located along bus routes 191 and 193 that are out of service. Based on this review, staff has concluded parking spaces can't be required for ADUs on most single-family residential lot west of I-5 and several areas inland of I-5. Refer to Attachment 2 for this analysis.

Since at least 1988, ADUs have only been allowed east of I-5 with the understanding that there is more parking and infrastructure to support second units. As stated above, State law now requires the City to permit ADUs on single-family lots west of I-5 according to the State requirements. This includes approximately 3,060 single-family lots in single-family zones and 1,799 sites in multi-family zones where ADUs could occur. This number represents the maximum development potential for ADUs west of I-5, not the actual potential. For several of these properties, lot constraints make it challenging or improbable to meet the State requirements to allow an ADU, such as lot coverage. For more details on development potential, refer to Attachment 3 for a map of single-family residential areas west of I-5 and the number of potential ADU sites by area.

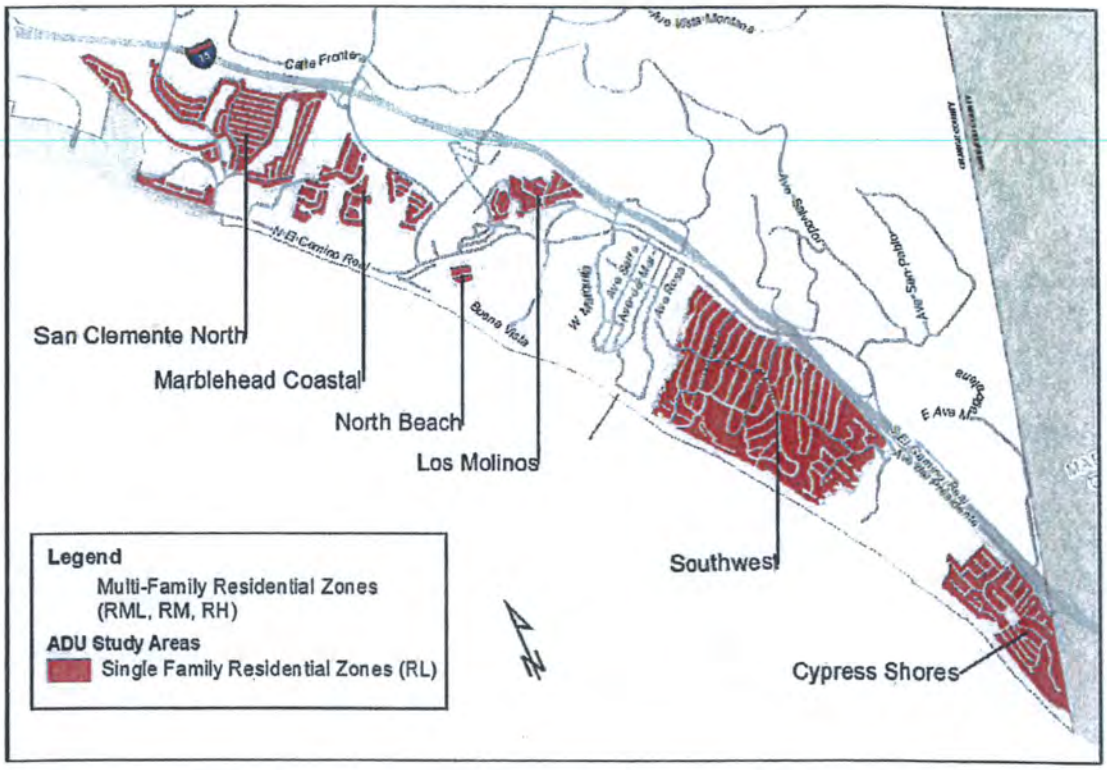
Restricting the location of ADUs

If the City updates its ADU Ordinance to conform to State law, the City may restrict ADUs to certain zones, if studies are conducted that support findings based on criteria that may include, but is not limited to: "*the adequacy of water and sewer services, that the impact of ADUs on traffic flow and public safety.*" If the Council wants to evaluate the feasibility of restricting ADUs in areas west of I-5, traffic and sewer capacity studies are needed to determine if this criteria can be met and adequately supported. Staff contacted engineering consultants to get cost estimates for studies and was informed expenses would be approximately $135,000. This cost includes:

- $125,000 for a sewer and water capacity study, and
- $10,000 for a traffic flow analysis.

To help the City Council weigh whether to initiate studies, below is a map of residential areas west of I-5 (Figure 1) and a review of which areas are more or less likely to support ADUs in terms of traffic and utility capacity. For a larger map, refer to Attachment 3.

Figure 1 – Residential areas West I-5



Traffic

Of the residential areas west of I-5, it seems Southwest and Cypress Shores are most likely to experience increased traffic, based on a basic review of development patterns, block lengths, street widths, and access to major roads west of I-5. This assumes ADUs are developed to maximum potential and ADU residents use additional vehicles. These residential neighborhoods generally have longer blocks and narrower streets for vehicles to exit-or-enter lots and access on-street parking. Also, with longer blocks, vehicles must travel longer distances to access major roadways that directly connect to I-5. Overall, these characteristics make it more likely for ADUs to increase traffic delay in certain locations and times of the day. For other residential areas west of I-5, any of the following reasons make it less likely for ADUs to increase traffic delay:

1. Single-family neighborhoods with single-loaded streets, such as Shorecliffs, provide more space for vehicles to enter-and-exit lots and park on-street with less potential to cause traffic queuing and delay.
2. Neighborhoods may have a combination of shorter blocks, wider streets, more on-street parking and space to access them, and more or shorter connections to major streets and I-5.
3. Single-family residential lots in multi-family residential zones are underdeveloped. Based on the traffic analysis for build-out of the General Plan, these areas have a street network that should accommodate more dwelling units like ADUs.

Water and sewer capacity

It is probable, but uncertain, the City's sewer and water infrastructure can support ADUs. The infrastructure was designed to accommodate a higher amount of water usage than current demand. Less water is being used than what was projected, due to improvements in the water efficiency of appliances, landscape irrigation, and other factors. This makes it more likely the water and sewer system can support ADUs west of I-5, but this cannot be confirmed unless a study is conducted.

Options for AB 2299

The City Council has the following options for AB 2299:

1. Amend the City ADU Ordinance in compliance with AB 2299 and include additional requirements where the City has discretion, such as prohibiting short-term rental use of ADUs. Refer to Attachment 1 for other types of requirements the City could consider adding.
2. In addition to updating the City ADU Ordinance to comply with AB 2299, this option involves considering whether to reinstate a City prohibition of ADUs west of I-5 that was nullified by the State law. For this to occur, studies on sewer and water capacity and traffic flow are needed to determine whether ADUs would have substantial impacts on infrastructure and traffic flow. If impacts would occur and can be proven by studies, the City could justify restricting ADUs according to required findings in the State law. To pursue this option, staff needs City Council direction to prepare and release a request for consultant proposals or RFP. Once the RFP is released and a selection process is completed, staff would come back to the City Council to seek approval of a consultant. The estimated cost for the studies is approximately $135,000.
3. Amend the City ADU Ordinance to be less restrictive than AB 2299, such as allowing short-term rental of ADUs or waiving parking standards throughout the City for ADUs.

Assembly Bill 2406, Junior Accessory Dwelling Units

This law authorizes, but does not require, a city to enact an Ordinance to regulate Junior Accessory Dwelling Units (JADUs) separately from other ADUs. By definition, a JADU is "a unit that is not more than 500 square feet in size and contained entirely within an existing single-family structure." Refer to Attachment 4 for a comparison of legal requirements for ADUs and JADUs. The new State law requires the following elements in a JADU Ordinance:

- The JADU must be constructed within in the existing dwelling, it must include at least one existing bedroom and an efficiency kitchen (sink, cooking appliance, counter, and storage), and it must have both a separate exterior entrance and an interior entry to the main residence.
- The owner must live in either the main residence or the JADU.

- The owner must record a deed restriction prohibiting the separate sale of the junior ADU and restricting the size and other attributes of the junior ADU to just what complies with AB 2406.
- No additional parking may be required for the JADU.
- The JADU may not be treated as a separate or new dwelling for purposes of fire and safety or for utility service or connection fees.
- The city must review JADUs at a staff level and make a decision on a permit within 120 days of submitting an application.

Options for AB 2406

The City Council has the following options for AB 2406:

1. Direct staff to initiate zoning amendments for an Ordinance to regulate Junior Accessory Dwelling Units (JADUs). The adoption of a JADU Ordinance is optional, not a State mandate. If a JADU Ordinance were adopted, there would be more options and less regulations than AB 2299 for allowing smaller ADUs under 500 square feet within a single-family residence.
2. Decide not to adopt a JADU Ordinance and regulate all ADUs similarly. If a JADU Ordinance is not adopted, the City must allow ADUs according to AB 2299, as described above. In some circumstances, this option could make it more challenging to allow ADUs smaller than 500 square feet within a single-family residence.

Recommended Actions: STAFF RECOMMENDS THAT the City Council:

1. Pursue Option 1 described above for complying with AB 2299.

2. Pursue Option 1 described above for complying with AB 2406.

Attachments

1. Table comparison of State law, City ADU Ordinance, and areas where ADU requirements can be added if zoning is updated.
2. GIS analysis of parking regulations within proximity to transit stops
3. GIS analysis of development potential west of I-5
4. Table comparison of State requirements for ADUs and JADUs
5. State legislation for AB 2299, SB 1069 (ADUs)
6. State legislation for AB 2406 (JADUs)

Notification: None required at this time to initiate zoning amendments. During the amendment process, notification is completed as required for public hearings.

AB 2299 Requirements and City Discretion to Impose Standards

If table cell is blank, the law does not address an issue

Category	Existing City ADU Ordinance *(now void)*	State Law (AB 2299)	If City Ordinance updated, there is discretion to:
Location	Allow ADUs on lots with single-family dwelling. Allowed ADUs inland of Interstate-5 if (I-5) criteria are met, and prohibited ADUs west of I-5. Several reasons were mentioned: 1. Areas west of the 1-5 freeway are too densely populated in the residential areas. 2. The residential lots and streets west of the I-5 freeway are of substandard size. 3. At the time, the wastewater treatment plan was approaching capacity and the planned expansion could not accommodate a substantial number of new residential households on existing developed lands. 4. Lack of adequate off-street parking within the areas west of the I-5 freeway. Development of ADUs would increase the demand for on-street parking; therefore possibly causing a dangerous driving condition.	Allow ADUs in at least some areas zoned for single-family or multifamily residential.[1]	Restrict ADU areas based on supported findings about the inadequacy of water and sewer services, the adverse impacts on traffic flow and safety, and other similar factors (not yet defined).[2]
Lot Development	Allow ADUs to be detached, attached, or located within (as in converted from) the existing living area of the primary residence.	Allow ADUs to be detached, attached, or located within (as in converted from) the existing living area of the primary residence.[3]	Restrict ADUs to one per lot.
Rentals and Sales		Allow the ADU to be rented.	Prohibit short-term rentals and sale of the ADU separate from the primary dwelling.

[1] Gov. Code § 65852.2(a)(1)(A).
[2] Gov. Code § 65852.2(a)(1)(A).
[3] Gov. Code § 65852.2(a)(1)(D)(iii).

Category	Existing City ADU Ordinance *(now void)*	State Law (AB 2299)	If City Ordinance updated, there is discretion to:
Occupancy	Owner-occupant	Not limit the number of occupants, short of the limits imposed by the Building Code.	Restrict occupancy to an owner-occupant.[4]
Parking Requirement	Require one covered parking space for the unit or one per each bedroom in the unit, whichever results in the greatest number of spaces being required, in addition to spaces required for the primary residence.	Not require any parking for an ADU: 1. that is within a half mile of public transit, or 2. that is in an architecturally or historically significant district, or 3. that is in an existing primary residence or an existing accessory structure, or 4. when an on-street parking permit is required but not offered to the occupant of the ADU, or 5. when there is a care share vehicle located within one block of the ADU.[5]	Require up to one parking space per ADU or per ADU bedroom, except where parking requirements are prohibited.[6]
Parking Location	Off-street parking spaces must be covered in a garage or carport, not be tandem or in a driveway, and meet setbacks for the residence.	Accept tandem parking in setbacks and existing driveways to satisfy ADU parking requirements if those methods of parking are allowed in any residential zone for any use.[7]	Prohibit tandem parking for all uses in residential zones.[8] Note: this would mean tandem parking is no longer allowed for duplexes on narrow lots so this make several duplexes nonconforming and have larger policy issues.
Height	ADUs attached or within converted space of a residence must meet maximum height limit for the zone of the single-family residence. For ADUs above a detached accessory buildings (e.g. garage), a Conditional Use Permit is required to allow buildings higher than 15 feet up to the maximum height the zone allows for for single-family residences.		Set height restrictions for ADUs.[9]

[4] Gov. Code § 65852.2(a)(6).
[5] Gov. Code § 65852.2(d).
[6] Gov. Code § 65852.2(a)(1)(D)(x)(I).
[7] Gov. Code § 65852.2(a)(1)(D)(x).
[8] Gov. Code § 65852.2(a)(1)(D)(x).
[9] Gov. Code § 65852.2(a)(1)(B)(i).

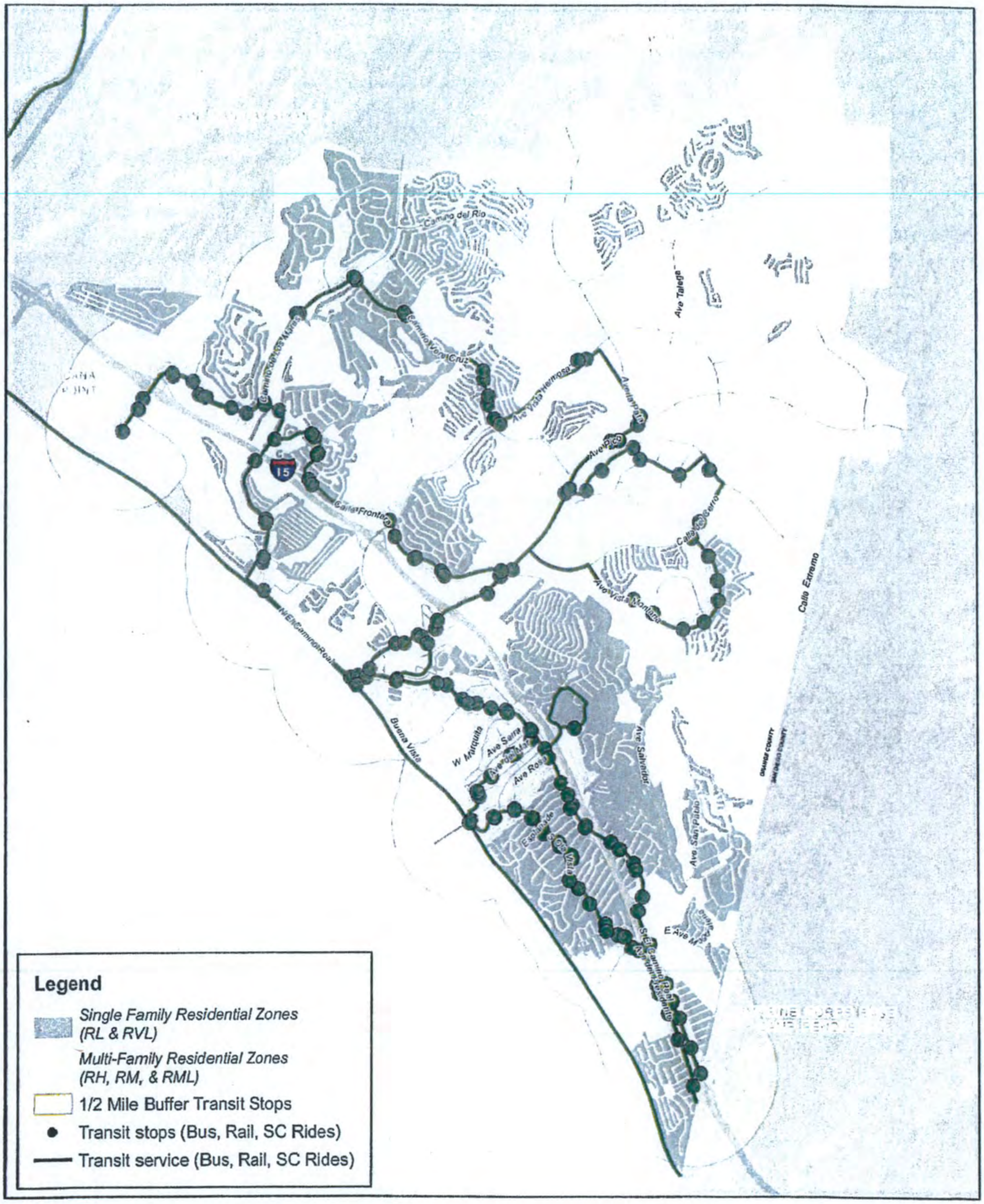
Category	Existing City ADU Ordinance *(now void)*	State Law (AB 2299)	If City Ordinance updated, there is discretion to:
Setbacks	ADUs attached or within converted space of a residence must meet maximum height limit for the zone of the single-family residence. For detached ADUs in the front half of a property, the ADU must meet the same setbacks that apply to the residence. If located in the rear half of a property, the ADU must required setbacks for the residence if the floor area of the building exceeds 450 square feet. If under 450 square feet, Building Code related setbacks apply only.	Allow a garage-to-ADU conversion, without imposing setbacks on the former garage.[10]	Require setbacks up to 5 feet for an ADU that is built above the existing garage.[11] Require setback minimums for detached and attached AUDs.[12] *Caution: Although a city may require setbacks for ADUs, City Attorney consultation is needed before setting setbacks that affect ADUs, in order to avoid conflicts with state law*
Lot Coverage	If an ADU is proposed that expands the building footprint and coverage, the ADU must comply with the maximum lot coverage allowed in the zone for which an ADU is proposed		Set lot coverage standards for ADUs.[13] *Caution: Although a city may lot coverage limits, City Attorney consultation is needed before setting lot coverage limits that affect ADUs, in order to avoid conflicts with state law*
Landscape			Require and restrict ADU landscaping.[14]
Architecture Review	Architectural review is required when a site abuts a property with a designated historic resource or is located within the Architectural Overlay		Regulate ADU architecture.[15]
Impacts to Historic Places	Architectural review is required when an ADU is proposed on a site that abuts a property with a designated historic resource		Impose standards to avoid impacts to historic property.[16]

[10] Gov. Code § 65852.2(a)(1)(D)(vii).
[11] Gov. Code § 65852.2(a)(1)(D)(vii).
[12] Gov. Code § 65852.2(a)(1)(B)(i).
[13] Gov. Code § 65852.2(a)(1)(B)(i).
[14] Gov. Code § 65852.2(a)(1)(B)(i).
[15] Gov. Code § 65852.2(a)(1)(B)(i).
[16] Gov. Code § 65852.2(a)(1)(B)(i).

ATTACHMENT 2

10-3-17 / 9A-10

2-19-19 / 7A-28



ADU Analysis City
Transit coverage & Residential Zones

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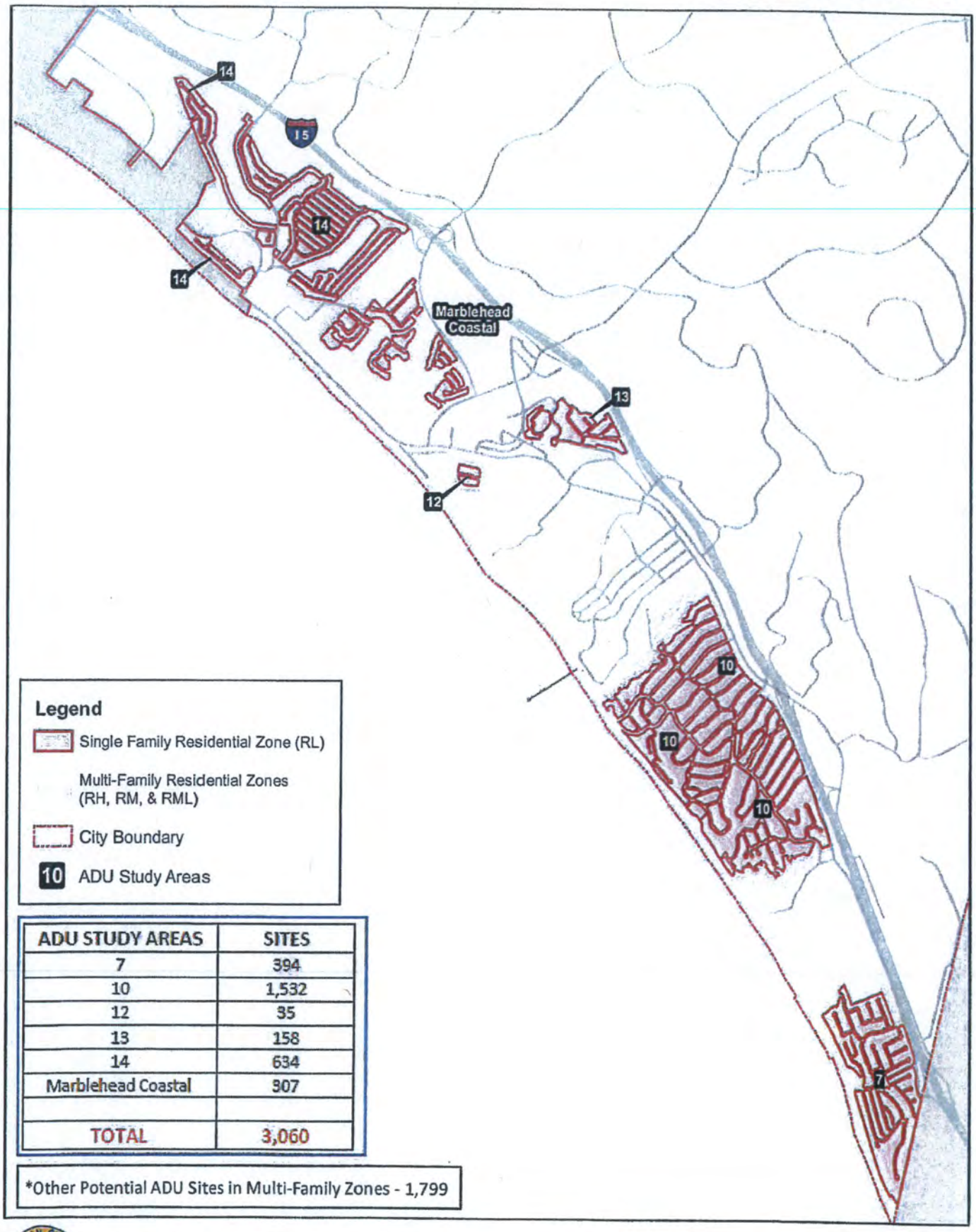
0 0.5 1 Miles

N

ATTACHMENT 3



Legend

- Single Family Residential Zone (RL)
- Multi-Family Residential Zones (RH, RM, & RML)
- City Boundary
- 10 ADU Study Areas

ADU STUDY AREAS	SITES
7	394
10	1,532
12	35
13	158
14	634
Marblehead Coastal	307
TOTAL	3,060

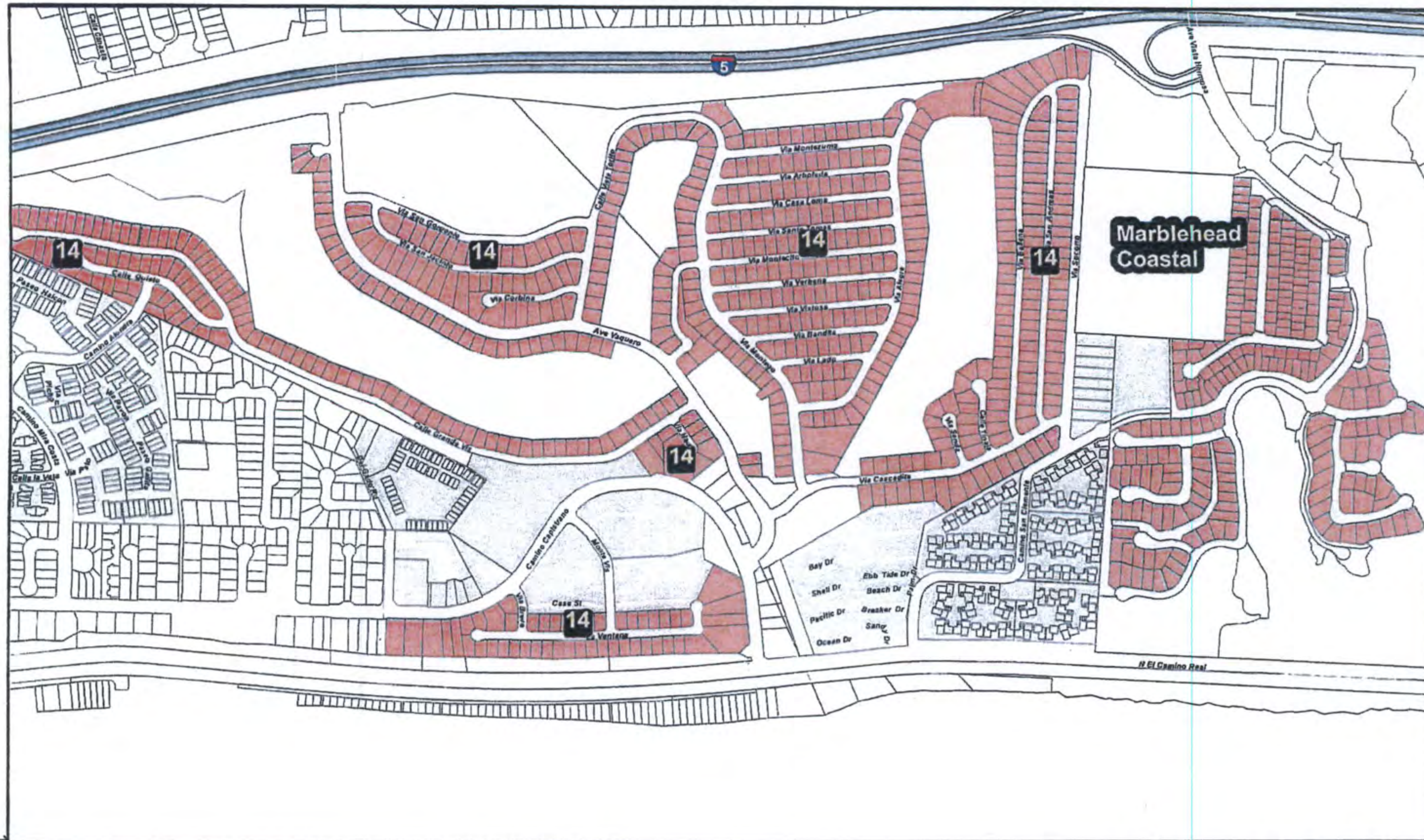
*Other Potential ADU Sites in Multi-Family Zones - 1,799

West of I-5 Spatial Breakdown
Single Family and Multi-Family Residential

0 0.5 1 Miles

10-3-17 / 9A-12

Z:\GIS_DIRECTORY\CommDev\ArcMap\Projects\ADU\West_I5_Spatial_SF_&_MF_Residential_Rev2.mxd



ADU Study Areas

1:9,000

0 800 1,600 Feet

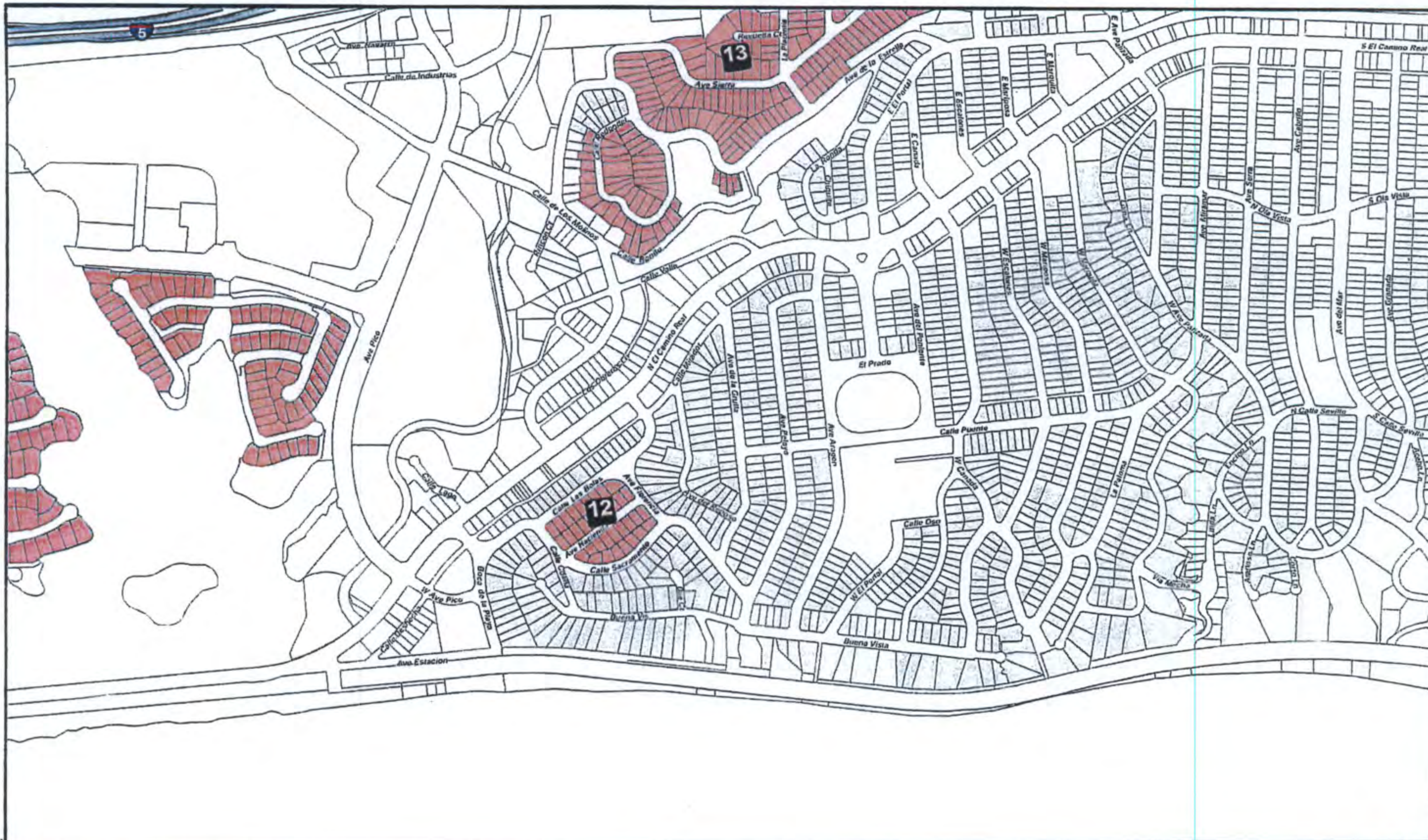
Legend

Multi-Family Residential Zones (RML, RM, RH)

ADU Study Areas

Single Family Residential Zones (RL)

Map Page 1



ADU Study Areas

1:9,000

0 800 1,600 Feet

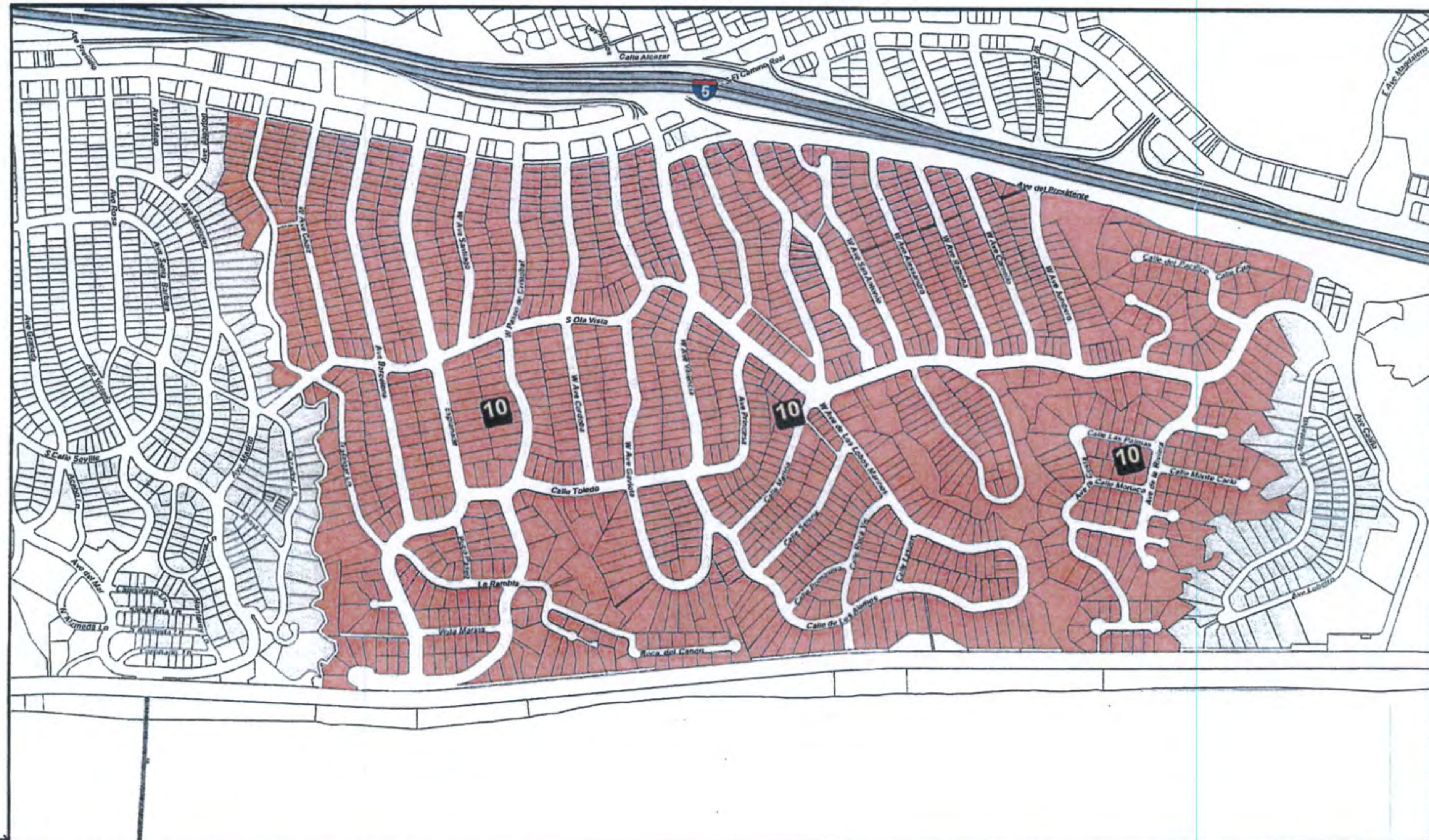
Legend

Multi-Family Residential Zones (RML, RM, RH)

ADU Study Areas

Single Family Residential Zones (RL)

Map Page 2



ADU Study Areas

1:9,000

0 800 1,600 Feet

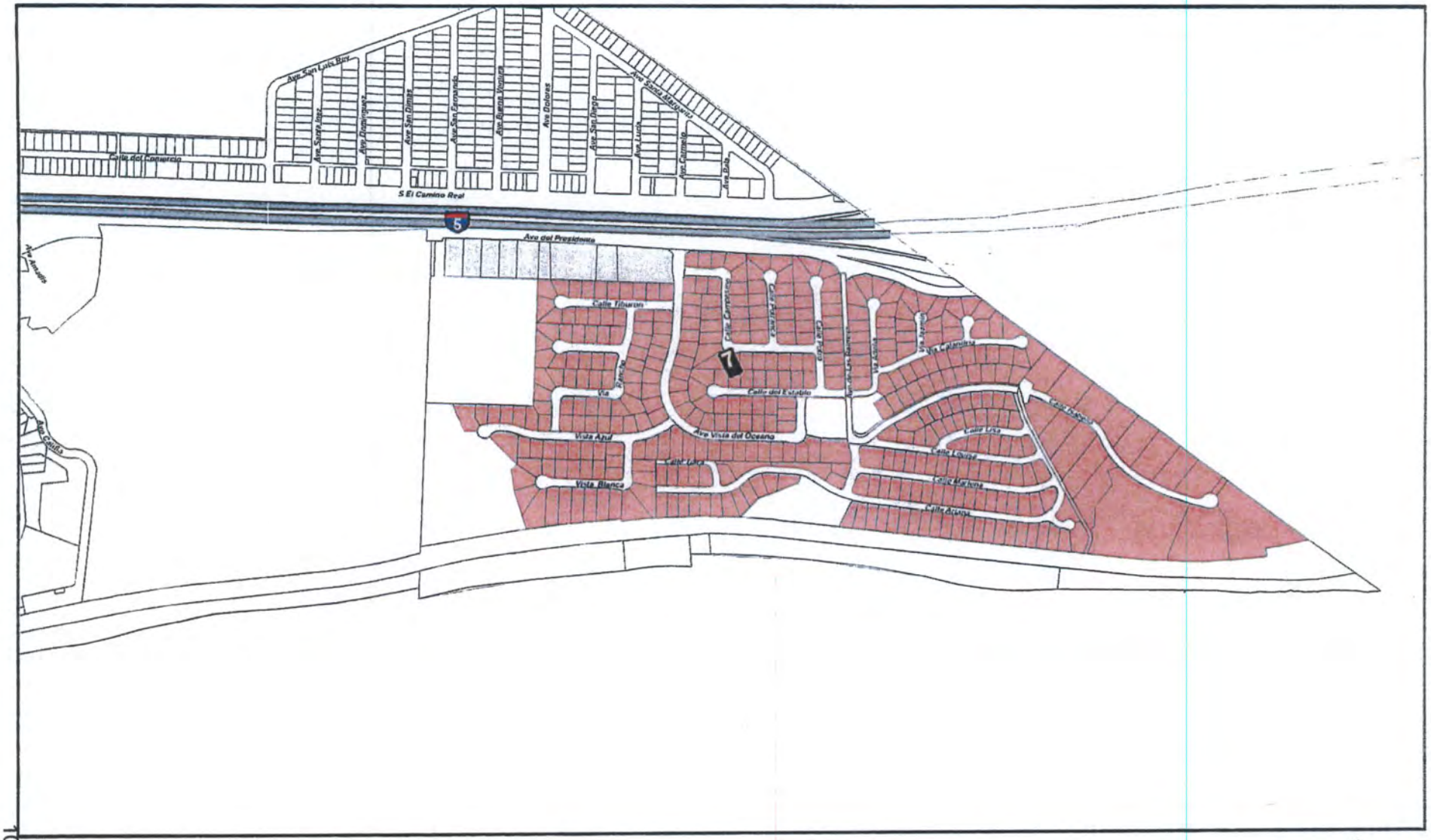
Legend

Multi-Family Residential Zones (RML, RM, RH)

ADU Study Areas

Single Family Residential Zones (RL)

Map Page 3



10-3-17 / 9A-16

2-19-19 / 7A-34

ADU Study Areas

1:9,000

0 800 1,600 Feet

Legend

Multi-Family Residential Zones (RML, RM, RH)

ADU Study Areas

Single Family Residential Zones (RL)

REQUIREMENTS	ADU- Detached (ADU-D)	ADU- Attached (ADU-A)	ADU- Attached; repurposing of existing space (ADU-R)	JADU- Attached; repurposing of existing space (JADU)
Activity Type	New construction	New construction; addition to existing structure	Conversion; conversion of existing space	Conversion; conversion of existing space
Lot/existing structure	Single family residence on SF or MF lot	Single family residence on SF or MF lot	Single family residence on SF or MF lot	Must be within existing SF residence on SF zoned lot
Maximum ADU Size	1,200 square feet	50% of living area up to 1,200 square feet	No size limits	500 square foot maximum
Kitchen	Required	Required	Required	Required: efficiency kitchen
Bathroom	Required	Required	Required	Not required; shared bath with primary residence is allowed
Separate Entrance	Jurisdiction may require	Jurisdiction may require	Required	Required
Parking	Depends, parking may be eliminated and cannot be required under specified conditions	Depends, parking may be eliminated and cannot be required under specified conditions	No, parking cannot be required	No, parking cannot be required
Prohibition on ADU Sale	Yes	Yes	Yes	Yes
Ministerial Approval Process	Yes	Yes	Yes	Yes

ATTACHMENT 5

Assembly Bill No. 2299

CHAPTER 735

An act to amend Section 65852.2 of the Government Code, relating to land use.

[Approved by Governor September 27, 2016. Filed with Secretary of State September 27, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2299, Bloom. Land use: housing: 2nd units.

The Planning and Zoning Law authorizes the legislative body of a city or county to regulate, among other things, the intensity of land use, and also authorizes a local agency to provide by ordinance for the creation of 2nd units in single-family and multifamily residential zones, as specified. Existing law authorizes the ordinance to designate areas within the jurisdiction of the local agency where 2nd units may be permitted, to impose specified standards on 2nd units, and to provide that 2nd units do not exceed allowable density and are a residential use, as specified.

This bill would replace the term "second unit" with "accessory dwelling unit." The bill would, instead, require the ordinance to include the elements described above and would also require the ordinance to require accessory dwelling units to comply with specified conditions. This bill would require ministerial, nondiscretionary approval of an accessory dwelling unit under an existing ordinance. The bill would also specify that a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

Existing law requires that parking requirements for 2nd units not exceed one parking space per unit or per bedroom. Under existing law, additional parking may be required provided that a finding is made that the additional parking requirements are directly related to the use of the 2nd unit and are consistent with existing neighborhood standards applicable to residential dwellings.

This bill would delete the above-described authorization for additional parking requirements.

By increasing the duties of local officials with respect to land use regulations, this bill would impose a state-mandated local program.

This bill would incorporate additional changes in Section 65852.2 of the Government Code proposed by SB 1069 that would become operative only if SB 1069 and this bill are both chaptered and become effective on or before January 1, 2017, and this bill is chaptered last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in single-family and multifamily residential zones. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(C) Notwithstanding subparagraph (B), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(D) 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.

(E) Require the accessory dwelling units to comply with all of the following:

(i) The unit is not intended for sale separate from the primary residence and may be rented.

(ii) The lot is zoned for single-family or multifamily use.

(iii) The accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(iv) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to a accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of accessory dwelling units.

(4) Any existing ordinance governing the creation of accessory dwelling units by a local agency or any such ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed accessory dwelling units on lots zoned for residential use that contain an existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of accessory dwelling units if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives its first application on or after July 1, 1983, for a permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for a accessory dwelling unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards.

(d) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000).

(e) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of accessory dwelling units, provided those requirements comply with subdivision (a).

(f) Local agencies shall submit a copy of the ordinances adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption.

(g) As used in this section, the following terms mean:

(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(C) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(h) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

SEC. 1.5. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in single-family and multifamily residential zones. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) 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.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit is not intended for sale separate from the primary residence and may be rented.

(ii) The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.

(iii) The accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(iv) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to a accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a

local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that contains an existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives its first application on or after July 1, 1983, for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the existing primary residence or an existing accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a single-family residential zone one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered new residential uses for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (e), a local agency shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (e), a local agency may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) Local agencies shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 65852.2 of the Government Code proposed by both this bill and Senate Bill 1069. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section 65852.2 of the Government Code, and (3) this bill is enacted after Senate Bill 1069, in which case Section 1 of this bill shall not become operative.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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Senate Bill No. 1069

CHAPTER 720

An act to amend Sections 65582.1, 65583.1, 65589.4, 65852.150, 65852.2, and 66412.2 of the Government Code, relating to land use.

[Approved by Governor September 27, 2016. Filed with Secretary of State September 27, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1069, Wieckowski. Land use; zoning.

The Planning and Zoning Law authorizes the legislative body of a city or county to regulate, among other things, the intensity of land use, and also authorizes a local agency to provide by ordinance for the creation of 2nd units in single-family and multifamily residential zones, as specified. That law makes findings and declarations with respect to the value of 2nd units to California's housing supply.

This bill would replace the term "second unit" with "accessory dwelling unit" throughout the law. The bill would additionally find and declare that, among other things, allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock, and these units are an essential component of housing supply in California.

The Planning and Zoning Law authorizes the ordinance for the creation of 2nd units in single-family and multifamily residential zones to include specified provisions regarding areas where accessory dwelling units may be located, standards, including the imposition of parking standards, and lot density. Existing law, when a local agency has not adopted an ordinance governing 2nd units as so described, requires the local agency to approve or disapprove the application ministerially, as provided.

This bill would instead require the ordinance for the creation of accessory dwelling units to include the provisions described above. The bill would prohibit the imposition of parking standards under specified circumstances. The bill would revise requirements for the approval or disapproval of an accessory dwelling unit application when a local agency has not adopted an ordinance. The bill would also require the ministerial approval of an application for a building permit to create one accessory dwelling unit within the existing space of a single-family residence or accessory structure, as specified. The bill would prohibit a local agency from requiring an applicant for this permit to install a new or separate utility connection directly between the unit and the utility or imposing a related connection fee or capacity charge. The bill would authorize a local agency to impose this requirement for other accessory dwelling units.

This bill would incorporate additional changes in Section 65852.2 of the Government Code proposed by AB 2299 that would become operative only

if AB 2299 and this bill are both chaptered and become effective on or before January 1, 2017, and this bill is chaptered last.

By increasing the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 65582.1 of the Government Code is amended to read:

65582.1. The Legislature finds and declares that it has provided reforms and incentives to facilitate and expedite the construction of affordable housing. Those reforms and incentives can be found in the following provisions:

(a) Housing element law (Article 10.6 (commencing with Section 65580) of Chapter 3).

(b) Extension of statute of limitations in actions challenging the housing element and brought in support of affordable housing (subdivision (d) of Section 65009).

(c) Restrictions on disapproval of housing developments (Section 65589.5).

(d) Priority for affordable housing in the allocation of water and sewer hookups (Section 65589.7).

(e) Least cost zoning law (Section 65913.1).

(f) Density bonus law (Section 65915).

(g) Accessory dwelling units (Sections 65852.150 and 65852.2).

(h) By-right housing, in which certain multifamily housing are designated a permitted use (Section 65589.4).

(i) No-net-loss-in zoning density law limiting downzonings and density reductions (Section 65863).

(j) Requiring persons who sue to halt affordable housing to pay attorney fees (Section 65914) or post a bond (Section 529.2 of the Code of Civil Procedure).

(k) Reduced time for action on affordable housing applications under the approval of development permits process (Article 5 (commencing with Section 65950) of Chapter 4.5).

(*l*) Limiting moratoriums on multifamily housing (Section 65858).

(m) Prohibiting discrimination against affordable housing (Section 65008).

(n) California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3).

(c) Community redevelopment law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, and in particular Sections 33334.2 and 33413).

SEC. 2. Section 65583.1 of the Government Code is amended to read:

65583.1. (a) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for substantial compliance with this article, may allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. The department may also allow a city or county to identify sites for accessory dwelling units based on the number of accessory dwelling units developed in the prior housing element planning period whether or not the units are permitted by right, the need for these units in the community, the resources or incentives available for their development, and any other relevant factors, as determined by the department. Nothing in this section reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.

(b) Sites that contain permanent housing units located on a military base undergoing closure or conversion as a result of action pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526), the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), or any subsequent act requiring the closure or conversion of a military base may be identified as an adequate site if the housing element demonstrates that the housing units will be available for occupancy by households within the planning period of the element. No sites containing housing units scheduled or planned for demolition or conversion to nonresidential uses shall qualify as an adequate site.

Any city, city and county, or county using this subdivision shall address the progress in meeting this section in the reports provided pursuant to paragraph (1) of subdivision (b) of Section 65400.

(c) (1) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to 25 percent of the community's obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583 where the community includes in its housing element a program committing the local government to provide units in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable housing costs or affordable rents, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, and which meet the requirements of paragraph (2). Except as otherwise provided in this subdivision, the community may substitute one dwelling unit for one dwelling unit site in the applicable income category. The program shall do all of the following:

(A) Identify the specific, existing sources of committed assistance and dedicate a specific portion of the funds from those sources to the provision of housing pursuant to this subdivision.

(B) Indicate the number of units that will be provided to both low- and very low income households and demonstrate that the amount of dedicated funds is sufficient to develop the units at affordable housing costs or affordable rents.

(C) Demonstrate that the units meet the requirements of paragraph (2).

(2) Only units that comply with subparagraph (A), (B), or (C) qualify for inclusion in the housing element program described in paragraph (1), as follows:

(A) Units that are to be substantially rehabilitated with committed assistance from the city or county and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not eligible to be "substantially rehabilitated" unless all of the following requirements are met:

(i) At the time the unit is identified for substantial rehabilitation, (I) the local government has determined that the unit is at imminent risk of loss to the housing stock, (II) the local government has committed to provide relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants temporarily or permanently displaced by the rehabilitation or code enforcement activity, or the relocation is otherwise provided prior to displacement either as a condition of receivership, or provided by the property owner or the local government pursuant to Article 2.5 (commencing with Section 17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code, or as otherwise provided by local ordinance; provided the assistance includes not less than the equivalent of four months' rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260, (III) the local government requires that any displaced occupants will have the right to reoccupy the rehabilitated units, and (IV) the unit has been found by the local government or a court to be unfit for human habitation due to the existence of at least four violations of the conditions listed in subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health and Safety Code.

(ii) The rehabilitated unit will have long-term affordability covenants and restrictions that require the unit to be available to, and occupied by, persons or families of low- or very low income at affordable housing costs for at least 20 years or the time period required by any applicable federal or state law or regulation.

(iii) Prior to initial occupancy after rehabilitation, the local code enforcement agency shall issue a certificate of occupancy indicating compliance with all applicable state and local building code and health and safety code requirements.

(B) Units that are located either on foreclosed property or in a multifamily rental or ownership housing complex of three or more units, are converted

with committed assistance from the city or county from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions for the unit, are not acquired by eminent domain, and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not converted by acquisition or the purchase of affordability covenants unless all of the following occur:

(i) The unit is made available for rent at a cost affordable to low- or very low income households.

(ii) At the time the unit is identified for acquisition, the unit is not available at an affordable housing cost to either of the following:

(I) Low-income households, if the unit will be made affordable to low-income households.

(II) Very low income households, if the unit will be made affordable to very low income households.

(iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households or if the acquired unit is occupied, the local government has committed to provide relocation assistance prior to displacement, if any, pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants displaced by the conversion, or the relocation is otherwise provided prior to displacement; provided the assistance includes not less than the equivalent of four months' rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low- or very low income for not less than 55 years.

(vi) For units located in multifamily ownership housing complexes with three or more units, or on or after January 1, 2015, on foreclosed properties, at least an equal number of new-construction multifamily rental units affordable to lower income households have been constructed in the city or county within the same planning period as the number of ownership units to be converted.

(C) Units that will be preserved at affordable housing costs to persons or families of low- or very low incomes with committed assistance from the city or county by acquisition of the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, a unit shall not be deemed preserved unless all of the following occur:

(i) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to, and reserved for occupancy by, persons of the same or lower income group as the current occupants for a period of at least 40 years.

(ii) The unit is within an "assisted housing development," as defined in paragraph (3) of subdivision (a) of Section 65863.10.

(iii) The city or county finds, after a public hearing, that the unit is eligible, and is reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next five years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) At the time the unit is identified for preservation it is available at affordable cost to persons or families of low- or very low income.

(3) This subdivision does not apply to any city or county that, during the current or immediately prior planning period, as defined by Section 65588, has not met any of its share of the regional need for affordable housing, as defined in Section 65584, for low- and very low income households. A city or county shall document for any housing unit that a building permit has been issued and all development and permit fees have been paid or the unit is eligible to be lawfully occupied.

(4) For purposes of this subdivision, "committed assistance" means that the city or county enters into a legally enforceable agreement during the period from the beginning of the projection period until the end of the second year of the planning period that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy within two years of the execution of the agreement. "Committed assistance" does not include tenant-based rental assistance.

(5) For purposes of this subdivision, "net increase" includes only housing units provided committed assistance pursuant to subparagraph (A) or (B) of paragraph (2) in the current planning period, as defined in Section 65588, that were not provided committed assistance in the immediately prior planning period.

(6) For purposes of this subdivision, "the time the unit is identified" means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.

(7) In the third year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2) shall report in writing to the legislative body, and to the department within 30 days of making its report to the legislative body, on its progress in providing units pursuant to this subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low- and very low income households, and it shall adequately document how each unit complies with this subdivision. If, by July 1 of the third year of the planning period, the city or county has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), the city

or county shall, not later than July 1 of the fourth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, it shall be prohibited from identifying units pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the housing element that it adopts for the next planning period, as defined in Section 65588, above the number of units actually provided or preserved due to committed assistance.

(d) A city or county may reduce its share of the regional housing need by the number of units built between the start of the projection period and the deadline for adoption of the housing element. If the city or county reduces its share pursuant to this subdivision, the city or county shall include in the housing element a description of the methodology for assigning those housing units to an income category based on actual or projected sales price, rent levels, or other mechanisms establishing affordability.

SEC. 3. Section 65589.4 of the Government Code is amended to read:

65589.4. (a) An attached housing development shall be a permitted use not subject to a conditional use permit on any parcel zoned for an attached housing development if local law so provides or if it satisfies the requirements of subdivision (b) and either of the following:

(1) The attached housing development satisfies the criteria of Section 21159.22, 21159.23, or 21159.24 of the Public Resources Code.

(2) The attached housing development meets all of the following criteria:

(A) The attached housing development is subject to a discretionary decision other than a conditional use permit and a negative declaration or mitigated negative declaration has been adopted for the attached housing development under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). If no public hearing is held with respect to the discretionary decision, then the negative declaration or mitigated negative declaration for the attached housing development may be adopted only after a public hearing to receive comments on the negative declaration or mitigated negative declaration.

(B) The attached housing development is consistent with both the jurisdiction's zoning ordinance and general plan as it existed on the date the application was deemed complete, except that an attached housing development shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the attached housing development site has not been rezoned to conform with the most recent adopted general plan.

(C) The attached housing development is located in an area that is covered by one of the following documents that has been adopted by the jurisdiction

within five years of the date the application for the attached housing development was deemed complete:

(I) A general plan.

(II) A revision or update to the general plan that includes at least the land use and circulation elements.

(III) An applicable community plan.

(IV) An applicable specific plan.

(D) The attached housing development consists of not more than 100 residential units with a minimum density of not less than 12 units per acre or a minimum density of not less than eight units per acre if the attached housing development consists of four or fewer units.

(E) The attached housing development is located in an urbanized area as defined in Section 21071 of the Public Resources Code or within a census-defined place with a population density of at least 5,000 persons per square mile or, if the attached housing development consists of 50 or fewer units, within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(F) The attached housing development is located on an infill site as defined in Section 21061.0.5 of the Public Resources Code.

(b) At least 10 percent of the units of the attached housing development shall be available at affordable housing cost to very low income households, as defined in Section 50105 of the Health and Safety Code, or at least 20 percent of the units of the attached housing development shall be available at affordable housing cost to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or at least 50 percent of the units of the attached housing development available at affordable housing cost to moderate-income households, consistent with Section 50052.5 of the Health and Safety Code. The developer of the attached housing development shall provide sufficient legal commitments to the local agency to ensure the continued availability and use of the housing units for very low, low-, or moderate-income households for a period of at least 30 years.

(c) Nothing in this section shall prohibit a local agency from applying design and site review standards in existence on the date the application was deemed complete.

(d) The provisions of this section are independent of any obligation of a jurisdiction pursuant to subdivision (c) of Section 65583 to identify multifamily sites developable by right.

(e) This section does not apply to the issuance of coastal development permits pursuant to the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(f) This section does not relieve a public agency from complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or relieve an applicant or public agency from complying with the Subdivision Map Act (Division 2 (commencing with Section 66473)).

(g) This section is applicable to all cities and counties, including charter cities, because the Legislature finds that the lack of affordable housing is of vital statewide importance, and thus a matter of statewide concern.

(h) For purposes of this section, "attached housing development" means a newly constructed or substantially rehabilitated structure containing two or more dwelling units and consisting only of residential units, but does not include an accessory dwelling unit, as defined by paragraph (4) of subdivision (j) of Section 65852.2, or the conversion of an existing structure to condominiums.

SEC. 4. Section 65852.150 of the Government Code is amended to read:

65852.150. (a) The Legislature finds and declares all of the following:

(1) Accessory dwelling units are a valuable form of housing in California.

(2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.

(3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.

(4) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.

(5) California faces a severe housing crisis.

(6) The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.

(7) Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.

(8) Accessory dwelling units are, therefore, an essential component of California's housing supply.

(b) It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.

SEC. 5. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in single-family and multifamily residential zones. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, architectural review,

maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(C) 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.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days of submittal of a complete building permit application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of accessory dwelling units.

(b) (1) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives its first application on or after July 1, 1983, for a permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to this subdivision unless it adopts an ordinance in accordance with subdivision (a) within 120 days after receiving the application. Notwithstanding Section 65901 or 65906, every local agency shall ministerially approve the creation of an accessory dwelling unit if the accessory dwelling unit complies with all of the following:

(A) The unit is not intended for sale separate from the primary residence and may be rented.

(B) The lot is zoned for single-family or multifamily use.

(C) The lot contains an existing single-family dwelling.

(D) The accessory dwelling unit is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(E) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(F) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(G) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.

(H) Local building code requirements that apply to detached dwellings, as appropriate.

(l) Approval by the local health officer where a private sewage disposal system is being used, if required.

(2) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(3) This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed accessory dwelling units on lots zoned for residential use that contain an existing single-family dwelling. No additional standards, other than those provided in this subdivision or subdivision (a), shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(4) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of accessory dwelling units if these provisions are consistent with the limitations of this subdivision.

(5) An accessory dwelling unit that conforms to this subdivision shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings that does not otherwise permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway. Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon fire and life safety conditions. This subdivision shall not apply to a unit that is described in subdivision (e).

(e) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the existing primary residence or an existing accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(f) Notwithstanding subdivisions (a) to (e), inclusive, a local agency shall ministerially approve an application for a building permit to create within a single-family residential zone one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(g) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered new residential uses for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (f), a local agency shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (f), a local agency may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(h) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of accessory dwelling units.

(i) Local agencies shall submit a copy of the ordinances adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption.

(j) As used in this section, the following terms mean:

(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one

or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(k) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

SEC. 5.5. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in single-family and multifamily residential zones. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) 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.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit is not intended for sale separate from the primary residence and may be rented.

(ii) The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.

(iii) The accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(iv) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to a accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency

has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that contains an existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives its first application on or after July 1, 1983, for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the existing primary residence or an existing accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a single-family residential zone one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered new residential uses for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (e), a local agency shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (e), a local agency may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) Local agencies shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

SEC. 6. Section 66412.2 of the Government Code is amended to read:

66412.2. This division shall not apply to the construction, financing, or leasing of dwelling units pursuant to Section 65852.1 or accessory dwelling units pursuant to Section 65852.2, but this division shall be applicable to the sale or transfer, but not leasing, of those units.

SEC. 7. Section 5.5 of this bill incorporates amendments to Section 65852.2 of the Government Code proposed by both this bill and Assembly Bill 2299. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section 65852.2 of the Government Code, and (3) this bill is enacted after Assembly Bill 2299, in which case Section 5 of this bill shall not become operative.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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ATTACHMENT 6

Assembly Bill No. 2406

CHAPTER 755

An act to add Section 65852.22 to the Government Code, relating to housing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2016. Filed with Secretary of State September 28, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2406, Thurmond. Housing: junior accessory dwelling units.

The Planning and Zoning Law authorizes a local agency to provide by ordinance for the creation of 2nd units in single-family and multifamily residential areas, as prescribed.

This bill would, in addition, authorize a local agency to provide by ordinance for the creation of junior accessory dwelling units, as defined, in single-family residential zones. The bill would require the ordinance to include, among other things, standards for the creation of a junior accessory dwelling unit, required deed restrictions, and occupancy requirements. The bill would prohibit an ordinance from requiring, as a condition of granting a permit for a junior accessory dwelling unit, additional parking requirements.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 65852.22 is added to the Government Code, immediately following Section 65852.2, to read:

65852.22. (a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence already built on the lot.

(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) 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.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the existing walls of the structure, and require the inclusion of an existing bedroom.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the structure, with an interior entry to the main living area. A permitted junior accessory dwelling may include a second interior doorway for sound attenuation.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

(A) A sink with a maximum waste line diameter of 1.5 inches.

(B) A cooking facility with appliances that do not require electrical service greater than 120 volts, or natural or propane gas.

(C) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine whether the junior accessory dwelling unit is in compliance with applicable building standards.

(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. A permit shall be issued within 120 days of submission of an application for a permit pursuant to this section. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(d) For the purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(e) For the purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(g) For purposes of this section, the following terms have the following meanings:

(1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to allow local jurisdictions the ability to promulgate ordinances that create secure income for homeowners and secure housing for renters, at the earliest possible time, it is necessary for this act to take effect immediately.

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STAFF REPORT
SAN CLEMENTE PLANNING COMMISSION

Date: December 19, 2018

PLANNER: Amy Stonich, AICP, Contract Planner

SUBJECT: **Zoning Amendment 18-243**, a city-initiated amendment (ZA 18-243) of the City of San Clemente Municipal Code Title 17 for accessory dwelling units.

REQUIRED FINDINGS

Zoning Amendments Section 17.16.040(F)(1) Required Findings:

General Findings. Prior to approval of a zoning amendment, the Planning Commission shall find that the proposed amendment is consistent with the General Plan and will not adversely affect the public health, safety and welfare. The draft Resolution (Attachment 1) and analysis section of this report provide an assessment of the project's compliance with these findings.

Noticing

Public notices were distributed per City and State requirements. Staff has received some inquiries as to what modifications may be proposed and when the draft ordinance would go to public hearing. However, no written public comments on this item have been received to date.

BACKGROUND

The State of California has determined that accessory dwelling units ("ADUs") can provide affordable housing options that address the statewide housing shortage. Recent statutory amendments (Senate Bill (SB) 1069, Assembly Bill (AB) 2299, AB 2406, AB 229, AB 494, and AB 2406) reduce regulations and streamline the approval process to encourage the development of ADUs.

Generally, ADUs take three forms (referenced in Figure 1). They are either:

- Detached: The unit is separated from the primary residential structure;
- Attached: The unit is attached to the primary residential structure; or
- Repurposed living space: Living area within the primary residence is converted into an independent living unit. Also referred to as "converted ADUs."

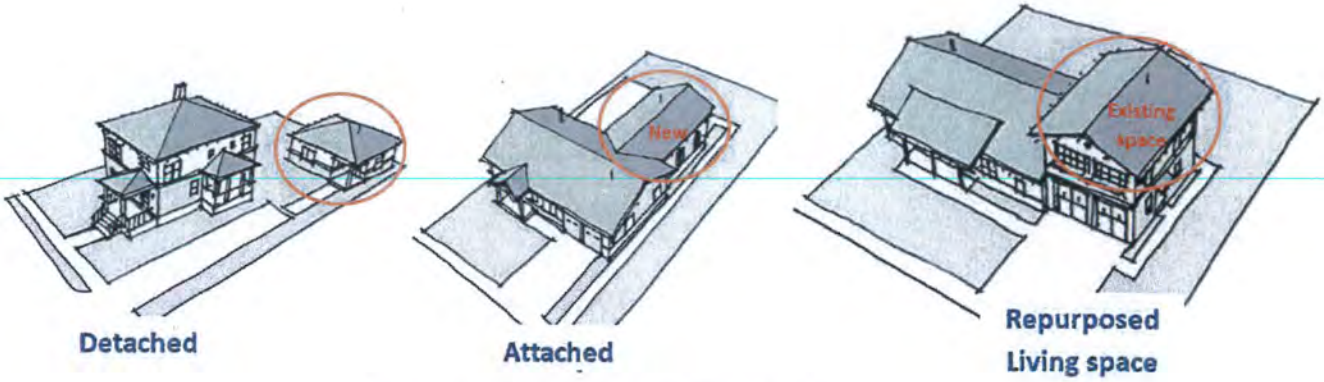

Figure 1 – Example of Each ADU Type

The City has an existing ADU (second residential unit) ordinance; however, the ordinance is currently preempted until adoption of a new ordinance that conforms to ADU Law. Approximately a dozen ADUs have been processed in the City since the implementation of the 2017 state amendments.

Based on City Council (Council) direction, staff prepared a traffic analysis and a Zoning Amendment to make the City's existing ADU ordinance consistent with ADU Law. These proposed changes include the establishment of development standards where permissible by state law. As recently amended, ADU Law states ADUs must be allowed in all residential zones that allow single-family residential uses. The City may establish limited ADU standards, including, but not limited to, parking, height, setback, lot coverage, landscaping, architecture, maximum unit size, and standards that prevent adverse impacts on any real property listed in the California Register of Historic Places (only one property in the City is both zoned for single-family use and listed in the historical register).

The traffic analysis that was conducted in response to Council direction to evaluate potential citywide impacts of the proposed ADU ordinance based on long-range (year 2035) traffic conditions. The purpose of the analysis was to determine whether added ADUs could result in any significant adverse traffic impacts as compared to the 2035 traffic conditions (based on the Centennial General Plan adopted by the City in 2013).

The analysis anticipates development of 123 ADUs by 2035 (approximately 6 units per year) under the new ADU Law. The potential traffic impacts were analyzed based on a comparison of year 2035 traffic conditions with and without the anticipated 123 ADUs. The results indicate that traffic generated by the 123 ADUs will not significantly impact any of the intersections throughout the City that were analyzed in the General Plan traffic study.

As such, allowing ADUs according to ADU Law does not create any new potentially significant impacts evaluated in the Centennial General Plan EIR or those of the Centennial General Plan traffic study that was conducted in support of the EIR.

On November 8, 2018, the Planning Commission held a study session to review State law and consider limitations that the City may implement on ADUs. The Commissioners provided input and direction to staff regarding limitation of detached ADUs in the front yard; the inclusion of the definition of a "kitchen"; and the inclusion of a comprehensive architectural checklist for ADUs.

DESCRIPTION

The proposed ordinance has been drafted to ensure ADUs do not adversely impact either adjacent residential parcels or the surrounding neighborhood within the constraints of ADU Law. The proposed ordinance includes:

- Permitted locations
- Permit procedures
- Standards for development, occupancy/tenancy, and building and construction
- Parking
- Site development standards including: height, setbacks, unit size and lot coverage
- Deed restriction requirement
- Definitions

Site Development Standards:

Overall, ADUs may not exceed the allowable density for the lot on which it is located. They can only be established on a residentially zoned lot where there is an existing or proposed detached single-family dwelling unit on the lot. This includes the following zones which allow the construction of a detached single-family residential unit: RVL, RL, RML RM, RH, MU 3.1, MU 3.3 and MU 5. In zones that permit a guest house (no kitchen and cannot be rented) and where an ADU is permitted, only the ADU or the guest house may permitted, but not both.

All ADUs must satisfy the lot coverage standards of the applicable zone. The proposed regulations will implement the following additional development standards:

1. **Detached and Attached ADUs**
    a. Height: An ADU shall not exceed the legal conforming height of the existing primary building. A detached ADU is further limited to a height of 15 feet when it is located within 20 feet of another residentially zoned property (Exception: up to 25 foot height limit for ADUs constructed above a legally established garage that conforms to setbacks).

    b. Setbacks: An ADU may not be located within:
        i. 20 feet from the front property line and may not be closer than the living area of the primary dwelling to the front property line;
        ii. 10 feet of a side property line;
        iii. 10 feet of a rear property line or 20 feet of a rear property line for any through-lot;
        iv. 5 feet of any alley;

v. 25 feet of any coastal bluff, coastal canyon, inland canyon; or
vi. 10 feet from open space zone.
vii. As an exception to the standards under ADU law, no setback is required for a legally established existing garage that is converted to an ADU. For an ADU that is constructed above a legally established existing garage that is nonconforming as to setback, a minimum setback of five feet is required from the side and rear lot lines.

c. Unit Size: A detached ADU is permitted to be constructed up to 1,200 square feet and an attached ADU is permitted up to 1,200 square feet or 50 percent (50%) of the existing living area of the primary dwelling.

2. **Repurposed living space** may be occupied in the same manner and within the same building envelope that the primary dwelling would be permitted with no limit on ADU size within the envelope of the primary dwelling.

Parking.

In accordance with the ADU Law, the draft ordinance will only require one parking space for an ADU. Also, as required by the ADU Law, this space will be allowed whether it is covered or uncovered, in a setback area or not, and as tandem parking or not.

Notably, the new State law now prohibits the City from requiring any parking for an ADU in the following instances:

1. The ADU is within a half-mile of public transit stops (bus, rail, or SC Rides); or
2. The ADU is in an architecturally or historically significant district, or
3. The ADU is in an existing primary residence or an existing accessory structure (i.e., is a repurposed living space), or
4. The ADU is located in an area where an on-street parking permit is required but not offered to the occupant of the ADU, or
5. When there is a city-sanctioned, posted car-share pick-up or drop-off location within one block of the ADU.

ADU Permit

As part of the requirements for an attached or detached ADU (not repurposed living space), an ADU permit will be required prior to issuance of permits to construct an ADU. This permit is administratively issued by Planning Staff as part of the plan check review and will insure compliance with State and City requirements. This permit will also allow for tracking the number of ADUs and for reporting purposes for the Regional Housing Needs Assessment (RHNA). RHNA is mandated by State Housing Law as part of the periodic process of updating local housing elements of the General Plan. The RHNA quantifies the need for housing within each jurisdiction during specified planning periods.

Design Standards for an ADU Permit.

Included as part of the ordinance, is a list of architectural requirements for attached and detached ADUs (not repurposed living space). The intent of these requirements is to make sure that ADUs are architecturally integrated with the primary dwelling and buffered from neighboring properties. These requirements will ensure that materials and colors, roofs, windows and doors will match the appearance and architectural design of the primary dwelling. Additional requirements will address the roof slope, lighting, the ADU entrance location, interior dimensions of the unit, and limitations on direct line of sight through windows to adjoining properties. Properties that have an identified historic resource listed on the federal, state, or local register of historic places must also comply with all applicable ministerial requirements imposed by the Secretary of Interior.

Conclusion

The draft ordinance includes regulations to maximize compatibility of ADUs with surrounding structures and neighborhoods. The City has historically allowed ADUs and it will continue to do so, now in more areas and without discretionary review, as required by new state law. The draft ordinance incorporates regulation as permitted by ADU law and as provided by the Planning Commission. It will permit ADUs in zones that allow residential use, on lots that include a proposed or existing detached single-family dwelling.

ENVIRONMENTAL REVIEW/COMPLIANCE (CEQA)

The Planning Division completed an initial environmental assessment of the project per the California Environmental Quality Act (CEQA). Staff recommends the Planning Commission recommends that the City Council find and determine that the ordinance is statutorily exempt from the California Environmental Quality Act (CEQA) under Public Resources Code section 21080.17, which exempts from CEQA any ordinance that is adopted to implement Government Code section 65852.1 or 65852.2. This ordinance implements section 65852.2 as amended by Senate Bill (SB) 1069, Assembly Bill (AB) 2299, AB 2406, AB 229, AB 494, and AB 2406.

RECOMMENDATION

Based on the information in the staff report and subject to the required findings and conditions of approval, staff recommends that the Planning Commission:

1. Recommend that the City Council find and determine that the ordinance is statutorily exempt from the California Environmental Quality Act (CEQA) under Public Resources Code section 21080.17, which exempts from CEQA any ordinance that is adopted to implement Government Code section 65852.1 or 65852.2. This ordinance implements section 65852.2 as amended by Senate Bill (SB) 1069, Assembly Bill (AB) 2299, AB 2406, AB 229, AB 494, and AB 2406.

2. Adopt Resolution PC 18-243, recommending that the City Council adopt an ordinance entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, FOR A CITY-INITIATED AMENDMENT (ZA 18-243) OF THE CITY OF SAN CLEMENTE MUNICIPAL CODE TITLE 17 FOR ACCESSORY DWELLING UNITS.

Attachments:

1. Resolution No. PC 18-243
   Exhibit A - Draft Ordinance
2. Planning Commission Study Session on ADUs from November 8, 2018

RESOLUTION NO. PC 18-036

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE ENTITLED: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, FOR A CITY-INITIATED AMENDMENT (ZA 18-243) OF THE CITY OF SAN CLEMENTE MUNICIPAL CODE TITLE 17 FOR ACCESSORY DWELLING UNITS.

WHEREAS, California Government Code, Section 65800 et seq. authorizes the City of San Clemente ("City") to adopt and administer zoning laws, ordinances, rules, and regulations as a means of implementing the General Plan;

WHEREAS, the San Clemente Municipal Code currently permits accessory dwelling units ("ADU") (formerly second residential dwelling units) in residential districts, subject to applicable state and federal law;

WHEREAS, the state Legislature has long held that ADUs in single-family and multifamily zones are a valuable means to provide affordable housing in California and, from time to time, changes the statutes related to accessory dwelling units including updates that took effect on January 1, 2017, and January 1, 2018;

WHEREAS, state law requires the City to deem ADUs to be "a residential use that is consistent with the existing general plan and zoning designation" (Gov. Code § 65852.2(a)(1)(C));

WHEREAS, state law makes an ADU a permitted use on any lot that is "zoned to allow single-family or multifamily use and [that] includes a proposed or existing single-family dwelling" (Gov. Code § 65852.2(a)(1)(D)(ii);

WHEREAS, on December 6, 2018, the City gave proper notice of the public hearing for the proposed ordinance by publishing in a newspaper of general circulation notice of a Planning Commission public hearing at which the ordinance would be considered; and

WHEREAS, on December 19, 2018, the Planning Commission of the City of San Clemente held a duly noticed public hearing on amendments to San Clemente Municipal Code Title 17 hereinafter referred to as Zoning Amendment ("ZA") 18-243, and considered evidence presented by City staff and other interested parties and made a recommendation to the City Council as fully set forth in this Resolution No. 18-036 relating to ZA 18-243.

NOW, THEREFORE, The Planning Commission of the City of San Clemente does hereby resolve as follows:

Section 1. Incorporation of Recitals.

The Planning Commission hereby finds that all of the facts in the Recitals are true and correct and are incorporated and adopted as findings of the Planning Commission as fully set forth in this resolution.

Section 2. CEQA Findings.

Based on its review of the entire record, including the Staff Report, public comments and testimony presented to the Planning Commission, and the facts outlined below, the Planning Commission hereby finds and determines that this resolution, with the proposed ordinance, has been assessed in accordance with the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines (Cal. Code Regs., § 15000 et seq.). Adoption of this resolution is statutorily exempt from the CEQA under Public Resources Code section 21080.17, which exempts ordinances that implement Government Code section 65852.1 or 65852.2. The ordinance recommended by this resolution implements section 65852.2. Therefore, the proposed ADU ordinance and this resolution are statutorily exempt.

Section 3. Adoption Recommended

Based on the entire record before the Planning Commission, all written and oral evidence presented to the Planning Commission, and the findings made and evidence discussed in the staff report and this resolution, the Planning Commission hereby recommends that the City Council approve and adopt the Ordinance entitled: "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, FOR A CITY-INITIATED AMENDMENT (ZA 18-243) OF THE CITY OF SAN CLEMENTE MUNICIPAL CODE TITLE 17 FOR ACCESSORY DWELLING UNITS" that is set forth in Exhibit A and incorporated herein by reference.

PASSED AND ADOPTED at a regular meeting of the City of San Clemente Planning Commission on December 19, 2018.

_____
Chair

CERTIFICATION:

I HEREBY CERTIFY this resolution was adopted at a regular meeting of the City of San Clemente Planning Commission on December 19, 2018, carried by the following roll call vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

_____

Secretary of the Planning Commission

55452.01400\31628470.4

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, FOR A CITY-INITIATED AMENDMENT (ZA 18-243) OF THE CITY OF SAN CLEMENTE MUNICIPAL CODE TITLE 17 FOR ACCESSORY DWELLING UNITS.

WHEREAS, California Government Code, Section 65800 et seq. authorizes the City of San Clemente ("City") to adopt and administer zoning laws, ordinances, rules and regulations as a means of implementing the General Plan;

WHEREAS, the San Clemente Municipal Code currently permits accessory dwelling units ("ADU") (formerly second residential dwelling units) in residential districts, subject to applicable state and federal law;

WHEREAS, the state Legislature has long held that ADUs in single-family and multifamily zones are a valuable way to provide affordable housing in California and, from time to time, changes the statutes related to accessory dwelling units including updates that took effect on January 1, 2017, and January 1, 2018;

WHEREAS, state law requires the City to deem ADUs to be "a residential use that is consistent with the existing general plan and zoning designation" (Gov. Code § 65852.2(a)(1)(C));

WHEREAS, state law makes an ADU a permitted use on any lot that is "zoned to allow single-family or multifamily use and [that] includes a proposed or existing single-family dwelling" (Gov. Code § 65852.2(a)(1)(D)(ii);

WHEREAS, on December 6, 2018, the City gave proper notice of the public hearing for the proposed ordinance by publishing in a newspaper of general circulation notice of a Planning Commission public hearing at which the ordinance would be considered;

WHEREAS, on December 19, 2018, the Planning Commission of the City of San Clemente held a duly noticed public hearing on amendments to San Clemente Municipal Code Title 17 hereinafter referred to as Zoning Amendment ("ZA") 18-243, and considered evidence presented by City staff and other interested parties and made a recommendation to the City Council as fully set forth in this Resolution No. 18-036 relating to ZA 18-243;

WHEREAS, on ____, 2019, the City gave proper notice of the proposed ordinance by publishing in a newspaper of general circulation notice of the public hearing before the City Council at which the ordinance would be considered; and

WHEREAS, on ___, 2019, the City Council held a duly noticed public hearing on the subject recommendation, and considered evidence presented by City staff and other interested parties and the recommendation of the Planning Commission.

NOW, THEREFORE, the City Council of the City of San Clemente hereby ordains as follows:

Section 1: CEQA Findings.

Based on its review of the entire record, including the staff report, public comments and testimony presented to the Planning Commision and City Council, and the facts outlined below, the City Council hereby finds and determines that this ordinance has been assessed in accordance with the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines (Cal. Code Regs., § 15000 et seq.) and is statutorily exempt from the CEQA under Public Resources Code section 21080.17, which exempts from CEQA any ordinance that is adopted to implement Government Code section 65852.1 or 65852.2. This ordinance implements section 65852.2. Therefore, this ordinance is statutorily exempt.

The documents and materials that constitute the record of proceedings on which this ordinance and the above findings are based are located at the City of San Clemente, Community Development Department, 910 Calle Negocio, #100, San Clemente, CA 92673. The custodian of records is the Community Development Director.

Section 2: San Clemente Municipal Code, Title 17, is hereby amended as follows:

Section 17.28.270 is repealed in its entirety.

A new Section 17.28.270 is added as follows:

17.28.270 Accessory Dwelling Units.

A. Purpose and Intent. The purpose and intent of this section is to provide reasonable regulations concerning the development of accessory dwelling units ("ADUs") within the City. These regulations in this section are intended to comply with requirements codified in the state Planning and Zoning Law related to ADUs in residential areas, including California Government Code section 65852.2. It is not the intent of this chapter to override lawful use restrictions as may be set forth in any applicable deed restriction or covenant affecting real property.

B. Effect of Conforming Accessory Dwelling Unit. An ADU that conforms to this section is:

1. Deemed an accessory use or an accessory building and is not considered to exceed the allowable density for the lot on which it is located;

2. Deemed a residential use that is consistent with the General Plan and the zoning designations for the lot; and

3. Not considered in the application of any ordinance, policy, or program to limit residential growth.

C. Locations Permitted.

1. An ADU is only permitted on a residentially zoned lot that includes one detached single-family dwelling unit on the lot.

2. Where an ADU is permitted under subsection C.1 above and a "guest house" is also permitted by this Code, only the ADU or the guest house is permitted. The approval or development of one precludes the other.

D. Permit Procedures.

1. Permits.

a. Except as provided in subsection D.1.b below, an ADU is not permitted without each of the following:

(1) an ADU permit,

(2) a building permit as required by the building code, and

(3) a recorded deed restriction as required by subsection F below.

b. Special Exception for Conversions of Existing Legal Living Area Space. An ADU that meets the requirements of subsection E.2 below does not require an ADU permit. It only requires the following:

(1) a building permit as required by the building code and

(2) a recorded deed restriction as required by subsection F below.

2. Application Processing.

a. An application for an ADU permit must be submitted to the City Planner on a form that is prepared and approved by the City Planner. The application must be include all the information and materials that are requested in the approved application form.

b. The City Planner may collect a fee for processing the application provided that the fee is first approved by the City Council through a resolution or ordinance.

3. Review.

a. The City Planner will review complete applications for an ADU permit for compliance with all the requirements of this section,

including those in subsections E (Standards) and F (Deed Restrictions). The ADU permit application shall be considered ministerially without any discretionary review or a hearing.

b. The City Planner shall approve or deny an application for an ADU permit within 120 days after receiving the complete application.

4. Fees.

a. Except as otherwise provided in this section, the construction of an ADU is subject to any applicable fee adopted under California, Title 7, Division 1, Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

b. An ADU that conforms to this section is not considered a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service.

E. Standards.

1. An ADU, except as provided in subsection E.2 below for repurposed living space, must meet the following standards:.:

a. Development on the Lot.

(1) The accessory dwelling unit must either be:

(a) Detached from the existing primary dwelling, but located on the same lot as the existing dwelling; or

(b) Attached to the existing dwelling.

(2) Only one ADU is allowed on a lot.

(3) The ADU may not be sold separately from the primary residence.

b. Occupancy and Tenancy.

(1) The property owner must occupy either the primary dwelling or the ADU as his or her domicile.

(2) An ADU may be rented long-term (longer than 30 days).The ADU may not be rented on a short-term basis (i.e., for 30 or fewer days) except within those areas that are designated for STLUs, and then only in full compliance with all applicable STLU regulations, including remittance of Transient Occupancy Tax.

c. Building and Construction

(1) An ADU must include permanent provisions for living, sleeping, eating, cooking (a kitchen as defined by this Code), and sanitation facilities (including sink, toilet, bathing facilities).

(2) An ADU must have fire sprinklers if the primary dwelling unit is also required to have fire sprinklers. If the City's Building Code requires a second-story addition to the primary dwelling unit to have fire sprinklers, then an ADU that is built as a second-story addition to the primary dwelling unit is required to have fire sprinklers.

(3) An ADU must be approved by the Local Health Officer if a private sewage-disposal system is used on the lot. If the primary dwelling on the lot is connected to a public or community-owned sewer system, then the ADU must also be connected to the same system.

(4) An ADU must satisfy the requirements of the City's Building and Fire Codes that apply to detached dwellings at the time that the building permit is issued, whether the ADU is a new detached ADU or a new addition to a detached primary dwelling. In the case of the latter, the new addition must comply with current Building and Fire Code regardless of whether the rest of the primary dwelling fully complies with current requirements.

(5) An ADU must have utility connections that conform to the City's building and plumbing requirements. The connections may be separate from or connected to those of the primary dwelling unit, depending on what the code requires.

(6) No passageway shall be required in conjunction with the construction of an ADU. "Passageway" means a pathway that is unobstructed clear to the sky and extends from the street to one entrance of the accessory dwelling unit.

(7) Distance from the Primary Building. A detached ADU shall be a minimum of five feet from the primary building, measured from the closest point of the ADU (whether wall, balcony, eave, etc.) to the closest point of the primary dwelling.

d. Parking.

(1) Except as provided in subsection E.1.d(2) below, ADUs must meet the following parking standards:

(a) One off-street parking space must be provided for the ADU. The property owner may establish the required ADU parking in setback areas or as tandem parking on an existing driveway.

(b) When a garage, carport, or other covered parking structure is demolished or converted for the construction of an ADU, the off-street parking spaces for the primary dwelling must be replaced, the replacement spaces must be located on the same lot but they may be in any configuration that is allowed for an ADU parking space, including, but not limited to, as covered spaces, uncovered spaces, tandem spaces, or by the use of mechanical automobile parking lifts.

(2) Parking standards shall not be imposed on an ADU when:

(a) The ADU is located within one-half mile of public transit stops (bus, rail, or SC Rides); or

(b) The ADU is located within an architecturally or historically significant historic district; or

(c) The ADU is part of the existing primary residence or an existing accessory structure (i.e., is a repurposed living space) as set forth in subsection E.2 below; or

(d) When on-street parking permits are required but not offered to the occupant of the ADU; or

(e) When there is a city-sanctioned, posted car-share pick-up or drop-off location within one block of the ADU.

e. Height.

(1) An ADU shall not exceed the legal conforming height of the existing primary dwelling.

(2) A detached ADU shall not exceed 15 feet in height within 20 feet of another residentially zoned property.

(3) Exception: An ADU that is constructed above a legally established existing garage that is nonconforming as to setback may be up to 25 feet in height or the legal conforming height of the primary dwelling.

f. Setbacks.

(1) No attached or detached ADU may be located within:

(a) 20 feet of the front property line and may not be closer than the living area of the primary dwelling to the front property line;

(b) 10 feet of a side property line;

(c) 10 feet of a rear property line or 20 feet of a rear property line for any through-lot;

(d) 5 feet of any alley;

(e) 25 feet of any coastal bluff, coastal canyon, inland canyon; or

(f) 10 feet from open space zone.

(2) Any portion of a property line that is contiguous with public right of way is deemed a front property line.

(3) Setback Exceptions. The following limited exceptions apply to the setbacks set forth in subsection E.1.f(1) above.

(a) Garage Conversions. No setback is required for a legally established existing garage that is converted to an ADU.

(b) For an ADU that is constructed above a legally established existing garage that is nonconforming as to setback, a minimum setback of five feet is required from the side and rear property lines.

g. Unit Size.

(1) The increased floor area of an attached ADU shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(2) The total floor area of a detached ADU shall not exceed 1,200 square feet.

(3) An ADU that is an efficiency dwelling unit as defined by Section 17958.1 of the California Health and Safety Code shall have a floor area of at least 150 square feet. An ADU that is not an efficiency unit under Section 17958.1 must have a floor area of at least 300 square feet.

h. Lot Coverage. Both the ADU and the primary dwelling shall not maximum exceed 50% lot coverage.

i. Access. The ADU and primary dwelling must use the same driveway to access the street, unless otherwise required for Fire Apparatus Access, as determined by the fire authority.

j. Architecture Review.

(1) The materials and colors of the exterior walls, roof, and windows and doors must match the appearance and architectural design of those of the primary dwelling.

(2) The roof slope must match that of the dominant roof slope of the primary dwelling. The dominant roof slope is the slope shared by the largest portion of the roof.

(3) The exterior lighting must be limited to shielded-lights or as otherwise required by the building or fire code.

(4) The ADU must have an independent exterior entrance, apart from that of the primary dwelling. The ADU entrance must be located on the side or rear building façade, or if located in front, not visible from public-right-of-way.

(5) The interior horizontal dimensions of an ADU must be at least 10 feet wide in every direction, with a minimum interior wall height of seven feet.

(6) Windows and doors of the ADU may not have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.

(7) The architectural treatment of an ADU to be constructed on a lot that has an identified historical resource listed on the federal, state, or local register of historic places must comply with all applicable ministerial requirements imposed by the Secretary of Interior.

2. A repurposed living space ADU is exempt from the requirements of subsection E.1 above if it meets each of the following requirements:

   a. The ADU is contained entirely within the living area space of the primary dwelling. "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any uninhabitable structure;

   b. The ADU has independent exterior access from the existing residence; and

   c. The setbacks for the ADU are sufficient for fire safety.

3. If the requirements of subsection E.2 above for an ADU in repurposed living space are met, then the applicant:

   a. Is not required to install a new or separate utility connection directly between the ADU and the utility or to pay a related connection fee or capacity charge.

   b. Shall record a deed restriction as provided in subsection F below and obtain a building permit as required by the building code as adopted and amended by Chapter 8.02.

F. Deed Restriction. Prior to issuance of a building permit for an ADU, a deed restriction shall be recorded against the title of the property in the County Recorder's office and a copy filed with the City Planner. Said deed restriction shall run with the land and shall bind all future owners, heirs, successors, or assigns. The form of the deed restriction shall be provided by the City and shall provide that:

1. The ADU may not be sold separately from the primary dwelling.

2. The ADU is restricted to the approved size and to other attributes allowed by this section.

3. The deed restriction runs with the land and may be enforced against future property owners.

4. The deed restriction may be removed if the owner eliminates the ADU. To remove the deed restriction, an owner may make a written request of the City Planner, providing evidence that the ADU has in fact been removed. The City Planner may then determine whether the evidence supports the claim that the ADU has been removed. Appeal may be taken from the City Planner's determination consistent with other provisions of this Code.

5. The deed restrictions shall be enforced by the City Planner or designee for the benefit of the City. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the City is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining use of the ADU in violation of the recorded restrictions or abatement of the illegal unit.

Section 17.32.030, Table 17.32.030 - Residenial Zone Uses, is amended as follows:

Use	RVL	RL	RML	RM	RH
~~Second Residential Units (Inland Side of I-5)~~ ~~13~~ Accessory Dwelling Units (13)	P	P	P	P	P

13 Refer to Section 17.28.270, ~~Second Residential~~ Accessory Dwelling Units (ADUs), of this title for special provisions for ~~second residential units~~ADUs.

Table 17.64.050 – Number of Parking Spaces Required is amended as follows:

Use	Number of Parking Spaces Required
~~Second Residential~~Accessory Dwelling Units	Please refer to Section 17.28.270, ~~Second Residential~~ Accessory Dwelling Units.

Section 17.88 (Definitions), is amended to add or modify the following definitions:

"Accessory Dwelling Unit" ("ADU"): A residential dwelling unit that is detached from, attached to, or located within the living area of an existing primary dwelling unit, and that provides complete independent living facilities with permanent provisions for sleeping, eating, cooking, and sanitation facilities for one or more persons. An accessory dwelling unit also includes an efficiency unit, as defined in California Health and Safety Code section 17958.1, and a manufactured home, as defined in section 18007.

"Domicile": A person's fixed, permanent, and principal home for legal purposes.

"Granny Flat": See "Accessory Dwelling Unit".

"Kitchen" means any room or part of a room which is designed, built, used and/or intended to be used for food preparation and/or cooking which contains facilities that include a sink; a stove, oven, range or other similar non-portable cooking device; and a refrigerator.

"Living Area": The interior habitable area of a dwelling unit, including basements and attics, but not including a garage or any uninhabitable structure.

"Second residential unit": See "Accessory Dwelling Unit".

Section 3: If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be invalid or unenforceable, such decision shall not affect the validity or enforceability of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases would be declared invalid or unenforceable.

Section 4: The City Clerk shall certify to the passage of this Ordinance and publish the same in the manner required by law, and this Ordinance shall take effect as provided by law.

APPROVED, ADOPTED AND SIGNED this ____day of ____, 2018.

ATTEST:

City Clerk of the City of San Clemente, California	Mayor of the City of San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. _____ having been regularly introduced at the meeting of __, 2018, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the ____ day of ____, 2018, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this ___ day of ____, 2018.

_____

CITY CLERK of the City of

San Clemente, California

APPROVED AS TO FORM:

_____

CITY ATTORNEY

55452.01400\31628475.5

Memorandum
Planning
November 8, 2018

To: Planning Commission
From: Amy Stonich, AICP, Contract Planner
Subject: Accessory Dwelling Units (ADUs)
Copies: Gabriel Perez, City Planner

INTRODUCTION

The State of California deems Accessory Dwelling Units (ADUs) a valuable way to provide affordable housing. An ADU is a secondary dwelling unit with complete independent living facilities for one or more persons. State legislators have amended ADU statutes in recent years. On January 1, 2017, amendments went into effect that made major changes to the way ADUs may be established (Attachment 1 Government Code 65852.2). Several other minor amendments have also been made since 2017 (taken together, the "ADU Law"). The ADU Law now limits how cities regulate ADUs, including parking requirements, development standards, and the permit-entitlement process.

The City has an existing ADU (second residential unit) ordinance, although the ordinance is currently preempted until adoption of a new ordinance that conforms to ADU Law. Based on City Council (Council) direction, staff prepared a traffic analysis and a Zoning Amendment to make the City's existing ADU ordinance consistent with ADU Law. These proposed changes include the establishment of development standards where permissible by state law.

Approximately a dozen ADUs have been processed in the City since the implementation of the 2017 state amendments. The intent of this study session is to inform the Planning Commission about the state amendments and permissible regulations. The draft ordinance will be included with the public hearing packet planned for December 2018.

BACKGROUND

The State has determined that ADUs can provide affordable housing options that address the statewide housing shortage. Recent statutory amendment (Senate Bill (SB) 1069, Assembly Bill (AB) 2299, AB 2406, AB 229, AB 494, and AB 2406) reduce regulations and streamline ADU approval.

This is reflected in the Legislature's policy statement in the ADU Law. Government Code Section 65852.150 states in part:

It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.

The Legislature made several changes to the ADU Law to encourage additional ADU construction that include:

- It made ADUs a legal, permitted use in all California cities.
- It established design standards that, when met, allow ADU development subject only to "ministerial approval," instead of discretionary approval. In other words, an ADU applicant only has to apply for and receive a building permit, and perhaps a ministerial ADU permit, from the local building or planning department, without any discretionary review or approval from a design-review subcommittee, planning commission, or city council.
- The Legislature has now severely limited whether and how much parking a city may require for an ADU. At most, a city may require a single off-street parking space for an ADU, and a city may not require even that single space if:
  - the proposed ADU lies within a half mile of transit;
  - is in a designated historic district;
  - is attached to the existing unit; or
  - it satisfies certain other conditions.

The *Accessory Dwelling Unit Memorandum* (December 2016) prepared by the California Department of Housing and Community Development (HCD) outlines the 2017 changes to ADU Law (the changes were enacted in 2016 and took effect in 2017) and is included as Attachment 2 for reference.

DISCUSSION

Generally, ADUs take three forms. These can be referenced in Figure 1. They are either:

- Detached: The unit is separated from the primary structure;
- Attached: The unit is attached to the primary structure; or
- Repurposed existing space: Living area within the primary residence is converted into an independent living unit. Also referred to as "converted ADUs."

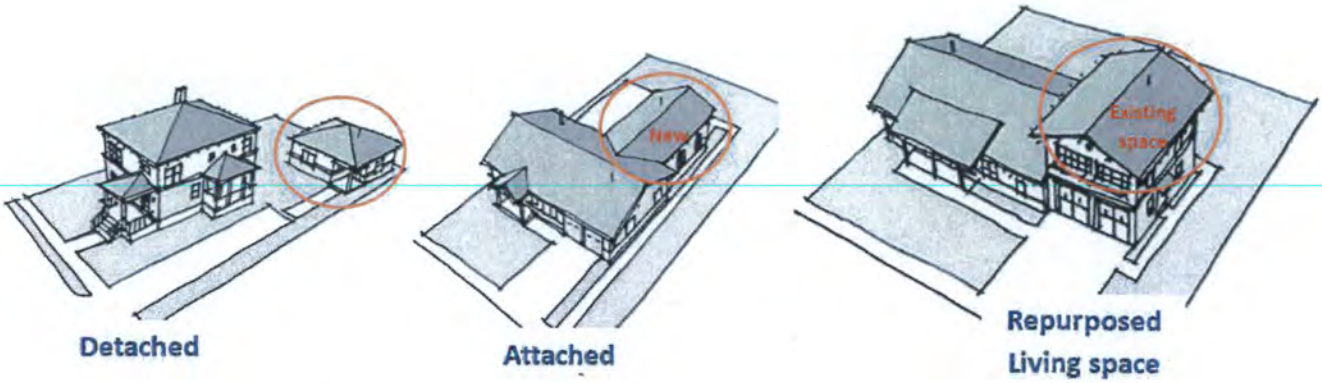

Figure 1 – Example of Each ADU Type

The City has historically allowed and regulated ADUs in conformance with state law. In 1988, the City adopted Ordinance No. 977 that established zoning requirements for ADUs (identified in the Zoning Ordinance as second residential units). The Zoning Ordinance had allowed ADUs in the Residential Very Low (RVL) and Residential Low (RL) zoning districts east of Interstate-5 (I-5), and prohibited ADUs west of I-5. ADUs were not allowed west of I-5 because of concerns about the higher population densities and smaller residential lot sizes and street widths in the area. At that time, the wastewater treatment plan was approaching capacity. Additionally, there was a perceived lack of adequate off-street parking. It was believed that ADUs would increase the demand for on-street parking, thereby causing a dangerous driving condition on already narrow streets.

The ADU Law, as recently amended, states ADUs must be allowed in all residential zones that allow single-family residential uses, but the ADU Law does allow a city to limit them based on criteria such as the adequacy of water and sewer services and the impact of ADUs on traffic flow and public safety. At the direction of the Council, staff prepared a traffic analysis to identify that areas that might suffer adverse traffic impacts due to ADUs. Ultimately, the analysis concludes that development of ADUs would not cause significant adverse traffic impacts and is discussed further in the Traffic Analysis section below.

The City may establish limited ADU standards, including, but are not limited to, parking, height, setback, lot coverage, landscaping, architecture, maximum unit size, and standards that prevent adverse impacts on any real property listed in the California Register of Historic Places (only one property in the City is both zoned for single-family use and listed in the historical register).

Traffic Analysis

A traffic analysis was conducted in response to Council's direction to evaluate potential citywide impacts of the proposed ADU ordinance based on long-range (year 2035) traffic conditions. The purpose of the analysis is to determine whether

added ADUs result in any significant adverse traffic impact compared to the 2035 traffic conditions that are based on the Centennial General Plan adopted by the City in 2013.

The analysis anticipates development of 123 ADUs by 2035 (approximately 6 units per year) under the new ADU Law. The potential traffic impacts were analyzed based on a comparison of year 2035 traffic conditions with and without the anticipated 123 ADUs. The results indicate that traffic generated by the 123 ADUs will not significantly impact any of the intersections throughout the City that were analyzed in the Centennial General Plan traffic study. As such, allowing ADUs according to ADU Law does not create any new potentially significant impacts evaluated in the Centennial General Plan EIR or those of the Centennial General Plan traffic study that was conducted in support of the EIR.

ADU Requirements to Be Amended in Draft Ordinance

Purpose and Intent: The purpose and intent of the proposed ordinance is to ensure ADUs do not adversely impact either adjacent residential parcels or the surrounding neighborhood within the constraints of ADU Law. The proposed ordinance is not intended to override lawful use restrictions as may be set forth in any applicable deed restriction or covenant affecting real property.

Permitted Locations for ADUs: The City's prior ordinance allowed ADUs in the Residential Very Low (RVL) and Residential Low (RL) zoning districts east of I-5 and prohibited ADUs west of I-5. The existing ADU area restrictions do not comply with new ADU Law. As standards and allowable areas may not be designed or applied in a manner that hinders the development of ADUs. State law provides that the City may, with certain supported findings, restrict ADU-allowed areas. As indicated in the HCD memo, designating areas where ADUs are allowed should be approached primarily on health and safety issues including water, sewer, traffic flow, and public safety. However, standards and allowable areas may not be designed or applied in a manner that hinders the development of ADUs and should maximize the potential for ADU development.

As indicated above, a traffic analysis was conducted to determine whether anticipated ADUs would significantly impact traffic levels in San Clemente, but the analysis found no significant impact. Therefore, the areas where ADUs were previously prohibited (i.e., west of I-5) may not be restricted on that basis now.

The City must allow ADUs in areas zoned to allow single-family residential use. In San Clemente, this includes single-family, multifamily, and mixed-use zoned properties, as long as they have, or will have, a detached single-family dwelling on the lot. By statute, ADUs cannot be used to calculate allowable density for a lot in these areas. In order to meet the requirements of state law, to avoid any unreasonable restrictions, and to ensure clear implementation, staff has drafted the ordinance to allow for an ADU in areas that allow for a residential use and includes a proposed or existing detached single-family dwelling.

Deed Restriction: Under the ADU Law, the City may require the property owner to record a deed restriction to ensure that the owner occupies either the primary or secondary unit and to prevent the unit from being conveyed separately from the primary residence. The draft ordinance will permit the long-term rental of an ADU, as the ADU Law requires, but it does not allow the short-term rental of an ADU (which would constitute a short-term lodging unit or STLU) except within those areas that are designated for STLUs, and then only in full compliance with all applicable STLU regulations, including remittance of Transient Occupancy Tax.

Development Standards and Setbacks: The draft ordinance will require that any attached ADU:

- Must fit within the same building envelope as it applies to the main house.
- May not be located within any of the setbacks for the main house and may not exceed the height of the main house.
- When taken together with the main house, they may not exceed the lot coverage or floor area ratio (FAR).
- Detached ADUs will be required to meet setback requirements that are the same as setbacks that apply to Accessory Buildings and Structures.
- As required by the ADU Law, the draft ordinance also allows the conversion of an existing garage into an ADU without requiring that the garage conform to setback requirements. In other words, the City must allow an existing garage to be converted to an ADU even if the garage is nonconforming as to setbacks. In such instances, the City may require the replacement of the former garage parking spaces, but state law requires the City to allow the replacement spaces as covered, uncovered, tandem, or on a mechanical automobile parking lift. The draft ordinance will require replacement spaces.

Design Standards: Similar to the City's existing ordinance, the draft ordinance will require that an ADU be the same as the primary dwelling in its use of materials and colors. As the prior ordinance required, the height of an ADU is subject to the same height limit of the zone for the primary building.

Unit Size: The City's prior ordinance limits a detached ADU to a maximum of 1,200 square feet and up to 30 percent (30%) of the existing habitable area of the main dwelling unit for an attached ADU (repurposed living space was not addressed). The ADU Law now requires a City to permit a maximum unit size as follows:

- Detached ADUs – up to 1,200 square feet;
- Attached ADUs – up to 1,200 square feet or 50 percent (50%) of existing living area of the primary dwelling, whichever is smaller; and
- Converted ADUs – no limit on ADU size within the envelope of the primary dwelling.

Additionally, the State permits, but does not require, cities to allow for Junior ADUs or "efficiency units" which are a maximum of 500 square feet in size and do not require common kitchen or sanitation facilities.

The draft ordinance will include amendments to allow a maximum unit size of 1,200 square feet or 50 percent of the existing living area, whichever is smaller, for attached ADUs – but will not permit Junior ADUs. The City Attorney reviewed statues affecting Junior ADUs and determined that they are unnecessary and largely already covered by mandatory ADU law. Furthermore, the City currently permits and will continue to allow a "guest house" as an alternative to an ADU, but in no case may both be permitted on one lot with a single-family dwelling. A guest house differs from an ADU in that it may not be rented and is defined as "*living quarters, having no kitchen/kitchenette, located on the same premises with a primary building and occupied for the sole use of occupants of the primary building, temporary guests, or persons permanently employed on the premises. No compensation for use of the guest house, in any form, shall be received or paid.*"

Ministerial and Timeline Review: The ADU Law requires that the City approve ADUs ministerially and that it reach a decision on an application within 120 days of receiving the complete application. The draft ordinance will reflect these requirements.

Parking: The existing ordinance requires that one additional covered off-street parking space be provided for an ADU plus one for each bedroom (whichever is ~~more~~less). In accordance with the ADU Law, the draft ordinance will only require one parking space for an ADU. Also, as required by the ADU Law, this space will be allowed whether it covered or uncovered, in a setback area or not, and as tandem parking or not.

Notably, the new State law now prohibits the City from requiring any parking for an ADU in the following instances:

1. The ADU is within a half-mile of public transit; or
2. The ADU is in an architecturally or historically significant district, or
3. The ADU is in an existing primary residence or an existing accessory structure (i.e., is a converted ADU), or
4. The ADU is located in an area where an on-street parking permit is required but not offered to the occupant of the ADU, or
5. When there is a car share vehicle (a city-sanctioned pick-up or drop-off) located within one block of the ADU.

In applying these criteria to City maps (Refer to Attachment 3 Transit Coverage & Residential Zones), staff observed that residential zones within approximately two-thirds (2/3) of the City are located within a half-mile of public transit (permanent bus stop) and would be precluded from a requirement for any parking.

Conclusion

The City has historically allowed ADUs and it will continue to do so, now in more areas and without discretionary review, as required by new state law. The purpose of this Study Session report is to provide the Planning Commission with updates on state law and to inform the Commission about the ways in which the City still

has some discretion to regulate ADUs. A table summarizing the ADU legislation and the City's options for regulating them is attached for reference in Attachment 4.

The draft ordinance will include regulations to maximize compatibility of ADUs with the surrounding structures and neighborhood. It will permit ADUs in zones that allow residential use, on lots that include a proposed or existing detached single-family dwelling.

A public hearing is anticipated to be scheduled for December for the Planning Commission to review the draft ordinance.

ATTACHMENT

1. Government Code 65852.2 (the ADU Law).
2. Accessory Dwelling Unit Memorandum (December 2016)
3. Transit Coverage & Residential Zones
4. Table summarizing ADU legislation and City's discretion to regulate ADUs

State of California

GOVERNMENT CODE

Section 65852.2

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on criteria that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) 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.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit may be rented separate from the primary residence, buy may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily use and includes a proposed or existing single-family dwelling.

(iii) The accessory dwelling unit is either attached or located within the living area of the proposed or existing primary dwelling or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) The total area of floorspace of an attached accessory dwelling unit shall not exceed 50 percent of the proposed or existing primary dwelling living area or 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback

of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the proposed or existing primary dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is 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 accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a zone for single-family use one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, including, but not limited to, a studio, pool house, or other similar structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. A city may require owner occupancy for either the primary or the accessory dwelling unit created through this process.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered by a local agency, special district, or water corporation to be a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) Local agencies shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. The department may review and comment on this submitted ordinance.

(i) As used in this section, the following terms mean:

(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and

sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(6) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(Amended by Stats. 2017, Ch. 602, Sec. 1.5. (AB 494) Effective January 1, 2018.)

Courtesy of Karen Chapple, UC Berkeley

California Department of Housing and Community Development
Where Foundations Begin

Accessory Dwelling Unit Memorandum

December 2016

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Understanding Accessory Dwelling Units and Their Importance

Courtesy of Karen Chapple, UC Berkeley

California's housing production is not keeping pace with demand. In the last decade less than half of the needed housing was built. This lack of housing is impacting affordability with average housing costs in California exceeding the rest of the nation. As affordability becomes more problematic, people drive longer distances between a home that is affordable and where they work, or double up to share space, both of which reduces quality of life and produces negative environmental impacts.

Beyond traditional market-rate construction and government subsidized production and preservation there are alternative housing models and emerging trends that can contribute to addressing home supply and affordability in California. One such example gaining popularity are Accessory Dwelling Units (ADUs) (also referred to as second units, in-law units, or granny flats).

What is an ADU

An ADU is a secondary dwelling unit with complete independent living facilities for one or more persons and generally takes three forms:

- *Detached*: The unit is separated from the primary structure
- *Attached*: The unit is attached to the primary structure
- *Repurposed Existing Space*: Space (e.g., master bedroom) within the primary residence is converted into an independent living unit
- *Junior Accessory Dwelling Units*: Similar to repurposed space with various streamlining measures

ADUs offer benefits that address common development barriers such as affordability and environmental quality. ADUs are an affordable type of home to construct in California because they do not require paying for land, major new infrastructure, structured parking, or elevators. ADUs are built with cost-effective one- or two-story wood frame construction, which is significantly less costly than homes in new multifamily infill buildings. ADUs can provide as much living space as the new apartments and condominiums being built in new infill buildings and serve very well for couples, small families, friends, young people, and seniors.

ADUs are a different form of housing that can help California meet its diverse housing needs. Young professionals and students desire to live in areas close to jobs, amenities, and schools. The problem with high-opportunity areas is that space is limited. There is a shortage of affordable units and the units that are available can be out of reach for many people. To address the needs of individuals or small families seeking living quarters in high opportunity areas, homeowners can construct an ADU on their lot or convert an underutilized part of their home like a garage

into a junior ADU. This flexibility benefits not just people renting the space, but the homeowner as well, who can receive an extra monthly rent income.

ADUs give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place as they require more care and helping extended families to be near one another while maintaining privacy.

Relaxed regulations and the cost to build an ADU make it a very feasible affordable housing option. A UC Berkeley study noted that one unit of affordable housing in the Bay Area costs about $500,000 to develop whereas an ADU can range anywhere up to $200,000 on the expensive end in high housing cost areas.

ADUs are a critical form of infill-development that can be affordable and offer important housing choices within existing neighborhoods. ADUs are a powerful type of housing unit because they allow for different uses, and serve different populations ranging from students and young professionals to young families, people with disabilities and senior citizens. By design, ADUs are more affordable and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education and services for many Californians.

Summary of Recent Changes to ADU Laws

Courtesy of Karen Chapple, UC Berkeley

The California legislature found and declared that, among other things, allowing accessory dwelling units (ADUs) in single family and multifamily zones provides additional rental housing and are an essential component in addressing housing needs in California. Over the years, ADU law has been revised to improve its effectiveness such as recent changes in 2003 to require ministerial approval. In 2017, changes to ADU laws will further reduce barriers, better streamline approval and expand capacity to accommodate the development of ADUs.

ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing options for family members, friends, students, the elderly, in-home health care providers, the disabled, and others. Further, ADUs offer an opportunity to maximize and integrate housing choices within existing neighborhoods.

Within this context, the Department has prepared this guidance to assist local governments in encouraging the development of ADUs. Please see Attachment 1 for the complete statutory changes. The following is a brief summary of the changes for each bill.

SB 1069 (Wieckowski)

S.B. 1069 (Chapter 720, Statutes of 2016) made several changes to address barriers to the development of ADUs and expanded capacity for their development. The following is a brief summary of provisions that go into effect January 1, 2017.

Parking

SB 1069 reduces parking requirements to one space per bedroom or unit. The legislation authorizes off street parking to be tandem or in setback areas unless specific findings such as fire and life safety conditions are made. SB 1069 also prohibits parking requirements if the ADU meets any of the following:

- Is within a half mile from public transit.
- Is within an architecturally and historically significant historic district.
- Is part of an existing primary residence or an existing accessory structure.
- Is in an area where on-street parking permits are required, but not offered to the occupant of the ADU.
- Is located within one block of a car share area.

Fees

SB 1069 provides that ADUs shall not be considered new residential uses for the purpose of calculating utility connection fees or capacity charges, including water and sewer service. The bill prohibits a local agency from requiring an ADU applicant to install a new or separate utility connection or impose a related connection fee or capacity charge for ADUs that are contained within an existing residence or accessory structure. For attached and detached ADUs, this fee or charge must be proportionate to the burden of the unit on the water or sewer system and may not exceed the reasonable cost of providing the service.

Fire Requirements

SB 1069 provides that fire sprinklers shall not be required in an accessory unit if they are not required in the primary residence.

ADUs within Existing Space

Local governments must ministerially approve an application to create within a single family residential zone one ADU per single family lot if the unit is:

- contained within an existing residence or accessory structure.
- has independent exterior access from the existing residence.
- has side and rear setbacks that are sufficient for fire safety.

These provisions apply within all single family residential zones and ADUs within existing space must be allowed in all of these zones. No additional parking or other development standards can be applied except for building code requirements.

No Total Prohibition

SB 1069 prohibits a local government from adopting an ordinance that precludes ADUs.

AB 2299 (Bloom)

Generally, AB 2299 (Chapter 735, Statutes of 2016) requires a local government (beginning January 1, 2017) to ministerially approve ADUs if the unit complies with certain parking requirements, the maximum allowable size of an attached ADU, and setback requirements, as follows:

- The unit is not intended for sale separate from the primary residence and may be rented.
- The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.
- The unit is either attached to an existing dwelling or located within the living area of the existing dwelling or detached and on the same lot.
- The increased floor area of the unit does not exceed 50% of the existing living area, with a maximum increase in floor area of 1,200 square feet.
- The total area of floorspace for a detached accessory dwelling unit does not exceed 1,200 square feet.
- No passageway can be required.
- No setback can be required from an existing garage that is converted to an ADU.

- Compliance with local building code requirements.
- Approval by the local health officer where private sewage disposal system is being used.

Impact on Existing Accessory Dwelling Unit Ordinances

AB 2299 provides that any existing ADU ordinance that does not meet the bill's requirements is null and void upon the date the bill becomes effective. In such cases, a jurisdiction must approve accessory dwelling units based on Government Code Section 65852.2 until the jurisdiction adopts a compliant ordinance.

AB 2406 (Thurmond)

AB 2406 (Chapter 755, Statutes of 2016) creates more flexibility for housing options by authorizing local governments to permit junior accessory dwelling units (JADU) through an ordinance. The bill defines JADUs to be a unit that cannot exceed 500 square feet and must be completely contained within the space of an existing residential structure. In addition, the bill requires specified components for a local JADU ordinance. Adoption of a JADU ordinance is optional.

Required Components

The ordinance authorized by AB 2406 must include the following requirements:

- Limit to one JADU per residential lot zoned for single-family residences with a single-family residence already built on the lot.
- The single-family residence in which the JADU is created or JADU must be occupied by the owner of the residence.
- The owner must record a deed restriction stating that the JADU cannot be sold separately from the single-family residence and restricting the JADU to the size limitations and other requirements of the JADU ordinance.
- The JADU must be located entirely within the existing structure of the single-family residence and JADU have its own separate entrance.
- The JADU must include an efficiency kitchen which includes a sink, cooking appliance, counter surface, and storage cabinets that meet minimum building code standards. No gas or 220V circuits are allowed.
- The JADU may share a bath with the primary residence or have its own bath.

Prohibited Components

This bill prohibits a local JADU ordinance from requiring:

- Additional parking as a condition to grant a permit.
- Applying additional water, sewer and power connection fees. No connections are needed as these utilities have already been accounted for in the original permit for the home.

Fire Safety Requirements

AB 2406 clarifies that a JADU is to be considered part of the single-family residence for the purposes of fire and life protections ordinances and regulations, such as sprinklers and smoke detectors. The bill also requires life and protection ordinances that affect single-family residences to be applied uniformly to all single-family residences, regardless of the presence of a JADU.

JADUs and the RHNA

As part of the housing element portion of their general plan, local governments are required to identify sites with appropriate zoning that will accommodate projected housing needs in their regional housing need allocation (RHNA) and report on their progress pursuant to Government Code Section 65400. To credit a JADU toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit which is fairly flexible. Local government count units as part of reporting to DOF. JADUs meet these definitions and this bill would allow cities and counties to earn credit toward meeting their RHNA allocations by permitting residents to create less costly accessory units. See additional discussion under JADU frequently asked questions.

Frequently Asked Questions: Accessory Dwelling Units

Should an Ordinance Encourage the Development of ADUs?

Yes, 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. The preparation, adoption, amendment and implementation of local ADU ordinances must be carried out consistent with Government Code Section 65852.150:

(a) The Legislature finds and declares all of the following:

(1) Accessory dwelling units are a valuable form of housing in California.

(2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.

(3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.

(4) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.

(5) California faces a severe housing crisis.

(6) The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.

(7) Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.

(8) Accessory dwelling units are, therefore, an essential component of California's housing supply.

(b) It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.

Are Existing Ordinances Null and Void?

Yes, any local ordinance adopted prior to January 1, 2017 that is not in compliance with the changes to ADU law will be null and void. Until an ordinance is adopted, local governments must apply "state standards" (See Attachment 4 for State Standards checklist). In the absence of a local ordinance complying with ADU law, local review must be limited to "state standards" and cannot include additional requirements such as those in an existing ordinance.

Are Local Governments Required to Adopt an Ordinance?

No, a local government **is not required** to adopt an ordinance. ADUs built within a jurisdiction that lacks a local ordinance must comply with state standards (See Attachment 4). Adopting an ordinance can occur through different forms such as a new ordinance, amendment to an existing ordinance, separate section or special regulations within the zoning code or integrated into the zoning code by district. However, the ordinance should be established legislatively through a public process and meeting and not through internal administrative actions such as memos or zoning interpretations.

Can a Local Government Preclude ADUs?

No local government cannot preclude ADUs.

Can a Local Government Apply Development Standards and Designate Areas?

Yes, local governments may apply development standards and may designate where ADUs are permitted (GC Sections 65852.2(a)(1)(A) and (B)). However, ADUs within existing structures must be allowed in all single family residential zones.

For ADUs that require an addition or a new accessory structure, development standards such as parking, height, lot coverage, lot size and maximum unit size can be established with certain limitations. ADUs can be avoided or allowed through an ancillary and separate discretionary process in areas with health and safety risks such as high fire hazard areas. However, standards and allowable areas must not be designed or applied in a manner that burdens the development of ADUs and should maximize the potential for ADU development. Designating areas where ADUs are allowed should be approached primarily on health and safety issues including water, sewer, traffic flow and public safety. Utilizing approaches such as restrictive overlays, limiting ADUs to larger lot sizes, burdensome lot coverage and setbacks and particularly concentration or distance requirements (e.g., no less than 500 feet between ADUs) may unreasonably restrict the ability of the homeowners to create ADUs, contrary to the intent of the Legislature.

Requiring large minimum lot sizes and not allowing smaller lot sizes for ADUs can severely restrict their potential development. For example, large minimum lot sizes for ADUs may constrict capacity throughout most of the community. Minimum lot sizes cannot be applied to ADUs within existing structures and could be considered relative to health and safety concerns such as areas on septic systems. While larger lot sizes might be targeted for various reasons such as ease of compatibility, many tools are available (e.g., maximum unit size, maximum lot coverage, minimum setbacks, architectural and landscape requirements) that allows ADUs to fit well within the built environment.

Can a Local Government Adopt Less Restrictive Requirements?

Yes, ADU law is a minimum requirement and its purpose is to encourage the development of ADUs. Local governments can take a variety of actions beyond the statute that promote ADUs such as reductions in fees, less restrictive parking or unit sizes or amending general plan policies.

Santa Cruz has confronted a shortage of housing for many years, considering its growth in population from incoming students at UC Santa Cruz and its proximity to Silicon Valley. The city promoted the development of ADUs as critical infill-housing opportunity through various strategies such as creating a manual to promote ADUs. The manual showcases prototypes of ADUs and outlines city zoning laws and requirements to make it more convenient for homeowners to get information. The City found that homeowners will take time to develop an ADU only if information is easy to find, the process is simple, and there is sufficient guidance on what options they have in regards to design and planning.

The city set the minimum lot size requirement at 4,500 sq. ft. to develop an ADU in order to encourage more homes to build an ADU. This allowed for a majority of single-family homes in Santa Cruz to develop an ADU. For more information, see http://www.cityofsantacruz.com/departments/planning-and-community-development/programs/accessory-dwelling-unit-development-program.

Can Local Governments Establish Minimum and Maximum Unit Sizes?

Yes, a local government may establish minimum and maximum unit sizes (GC Section 65852.2(c). However, like all development standards (e.g., height, lot coverage, lot size), unit sizes should not burden the development of ADUs. For example, setting a minimum unit size that substantially increases costs or a maximum unit size that unreasonably restricts opportunities would be inconsistent with the intent of the statute. Typical maximum unit sizes range from 800 square feet to 1,200 square feet. Minimum unit size must at least allow for an efficiency unit as defined in Health and Safety Code Section 17958.1.

ADU law requires local government approval if meeting various requirements (GC Section 65852.2(a)(1)(D)), including unit size requirements. Specifically, attached ADUs shall not exceed 50 percent of the existing living area or 1,200 square feet and detached ADUs shall not exceed 1,200 square feet. A local government may choose a maximum unit size less than 1,200 square feet as long as the requirement is not burdensome on the creation of ADUs.

Can ADUs Exceed General Plan and Zoning Densities?

An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Minimum lot sizes must not be doubled (e.g., 15,000 square feet) to account for an ADU. Further, local governments could elect to allow more than one ADU on a lot.

New developments can increase the total number of affordable units in their project plans by integrating ADUs. Aside from increasing the total number of affordable units, integrating ADUs also promotes housing choices within a development. One such example is the Cannery project in Davis, CA. The Cannery project includes 547 residential units with up to 60 integrated ADUs. ADUs within the Cannery blend in with surrounding architecture, maintaining compatibility with neighborhoods and enhancing community character. ADUs are constructed at the same time as the primary single-family unit to ensure the affordable rental unit is available in the housing supply concurrent with the availability of market rate housing.

How Are Fees Charged to ADUs?

All impact fees, including water, sewer, park and traffic fees must be charged in accordance with the Fee Mitigation Act, which requires fees to be proportional to the actual impact (e.g., significantly less than a single family home).

Fees on ADUs, must proportionately account for impact on services based on the size of the ADU or number of plumbing fixtures. For example, a 700 square foot new ADU with one bathroom that results in less landscaping should be charged much less than a 2,000 square foot home with three bathrooms and an entirely new landscaped parcel which must be irrigated. Fees for ADUs should be significantly less and should account for a lesser impact such as lower sewer or traffic impacts.

What Utility Fee Requirements Apply to ADUs?

Cities and counties cannot consider ADUs as new residential uses when calculating connection fees and capacity charges.

Where ADUs are being created within an existing structure (primary or accessory), the city or county cannot require a new or separate utility connections for the ADU and cannot charge any connection fee or capacity charge.

For other ADUs, a local agency may require separate utility connections between the primary dwelling and the ADU, but any connection fee or capacity charge must be proportionate to the impact of the ADU based on either its size or the number of plumbing fixtures.

What Utility Fee Requirements Apply to Non-City and County Service Districts?

All local agencies must charge impact fees in accordance with the Mitigation Fee Act (commencing with Government Code Section 66000), including in particular Section 66013, which requires the connection fees and capacity charges to be proportionate to the burden posed by the ADU. Special districts and non-city and county service districts must account for the lesser impact related to an ADU and should base fees on unit size or number of plumbing fixtures. Providers should consider a proportionate or sliding scale fee structures that address the smaller size and lesser impact of ADUs (e.g., fees per square foot or fees per fixture). Fee waivers or deferrals could be considered to better promote the development of ADUs.

Do Utility Fee Requirements Apply to ADUs within Existing Space?

No, where ADUs are being created within an existing structure (primary or accessory), new or separate utility connections and fees (connection and capacity) must not be required.

Does "Public Transit" Include within One-half Mile of a Bus Stop and Train Station?

Yes, "public transit" may include a bus stop, train station and paratransit if appropriate for the applicant. "Public transit" includes areas where transit is available and can be considered regardless of tighter headways (e.g., 15 minute intervals). Local governments could consider a broader definition of "public transit" such as distance to a bus route.

Can Parking Be Required Where a Car Share Is Available?

No, ADU law does not allow parking to be required when there is a car share located within a block of the ADU. A car share location includes a designated pick up and drop off location. Local governments can measure a block from a pick up and drop off location and can decide to adopt broader distance requirements such as two to three blocks.

Is Off Street Parking Permitted in Setback Areas or through Tandem Parking?

Yes, ADU law deliberately reduces parking requirements. Local governments may make specific findings that tandem parking and parking in setbacks are infeasible based on specific site, regional topographical or fire and life safety conditions or that tandem parking or parking in setbacks is not permitted anywhere else in the jurisdiction. However, these determinations should be applied in a manner that does not unnecessarily restrict the creation of ADUs.

Local governments must provide reasonable accommodation to persons with disabilities to promote equal access housing and comply with fair housing laws and housing element law. The reasonable accommodation procedure must provide exception to zoning and land use regulations which includes an ADU ordinance. Potential exceptions are not limited and may include development standards such as setbacks and parking requirements and permitted uses that further the housing opportunities of individuals with disabilities.

Is Covered Parking Required?

No, off street parking must be permitted through tandem parking on an existing driveway, unless specific findings are made.

Is Replacement Parking Required When the Parking Area for the Primary Structure Is Used for an ADU?

Yes, but only if the local government requires off-street parking to be replaced in which case flexible arrangements such as tandem, including existing driveways and uncovered parking are allowed. Local governments have an opportunity to be flexible and promote ADUs that are being created on existing parking space and can consider not requiring replacement parking.

Are Setbacks Required When an Existing Garage Is Converted to an ADU?

No, setbacks must not be required when a garage is converted or when existing space (e.g., game room or office) above a garage is converted. Rear and side yard setbacks of no more than five feet are required when new space is added above a garage for an ADU. In this case, the setbacks only apply to the added space above the garage, not the existing garage and the ADU can be constructed wholly or partly above the garage, including extending beyond the garage walls.

Also, when a garage, carport or covered parking structure is demolished or where the parking area ceases to exist so an ADU can be created, the replacement parking must be allowed in any "configuration" on the lot, "...including,

but not limited to, covered spaces, uncovered spaces, or tandem spaces, or...." Configuration can be applied in a flexible manner to not burden the creation of ADUs. For example, spatial configurations like tandem on existing driveways in setback areas or not requiring excessive distances from the street would be appropriate.

Are ADUs Permitted in Existing Residence or Accessory Space?

Yes, ADUs located in single family residential zones and existing space of a single family residence or accessory structure must be approved regardless of zoning standards (Section 65852.2(a)(1)(B)) for ADUs, including locational requirements (Section 65852.2(a)(1)(A)), subject to usual non-appealable ministerial building permit requirements. For example, ADUs in existing space does not necessitate a zoning clearance and must not be limited to certain zones or areas or subject to height, lot size, lot coverage, unit size, architectural review, landscape or parking requirements. Simply, where a single family residence or accessory structure exists in any single family residential zone, so can an ADU. The purpose is to streamline and expand potential for ADUs where impact is minimal and the existing footprint is not being increased.

Zoning requirements are not a basis for denying a ministerial building permit for an ADU, including non-conforming lots or structures. The phrase, "..within the existing space" includes areas within a primary home or within an attached or detached accessory structure such as a garage, a carriage house, a pool house, a rear yard studio and similar enclosed structures.

Are Owner Occupants Required?

No, however, a local government can require an applicant to be an owner occupant. The owner may reside in the primary or accessory structure. Local governments can also require the ADU to not be used for short term rentals (terms lesser than 30 days). Both owner occupant use and prohibition on short term rentals can be required on the same property. Local agencies which impose this requirement should require recordation of a deed restriction regarding owner occupancy to comply with GC Section 27281.5

Are Fire Sprinklers Required for ADUs?

Depends, ADUs shall not be required to provide fire sprinklers if they are not or were not required of the primary residence. However, sprinklers can be required for an ADU if required in the primary structure. For example, if the primary residence has sprinklers as a result of an existing ordinance, then sprinklers could be required in the ADU. Alternative methods for fire protection could be provided.

If the ADU is detached from the main structure or new space above a detached garage, applicants can be encouraged to contact the local fire jurisdiction for information regarding fire sprinklers. Since ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing options for family members, students, the elderly, in-home health care providers, the disabled, and others, the fire departments want to ensure the safety of these populations as well as the safety of those living in the primary structure. Fire Departments can help educate property owners on the benefits of sprinklers, potential resources and how they can be installed cost effectively. For example, insurance rates are typically 5 to 10 percent lower where the unit is sprinklered. Finally, other methods exist to provide additional fire protection. Some options may include additional exits, emergency escape and rescue openings, 1 hour or greater fire-rated assemblies, roofing materials and setbacks from property lines or other structures.

Is Manufactured Housing Permitted as an ADU?

Yes, an ADU is any residential dwelling unit with independent facilities and permanent provisions for living, sleeping, eating, cooking and sanitation. An ADU includes an efficiency unit (Health and Safety Code Section 17958.1) and a manufactured home (Health and Safety Code Section 18007).

Health and Safety Code Section 18007(a) **"Manufactured home,"** for the purposes of this part, means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. "Manufactured home" includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

Can an Efficiency Unit Be Smaller than 220 Square Feet?

Yes, an efficiency unit for occupancy by no more than two persons, by statute (Health and Safety Code Section 17958.1), can have a minimum floor area of 150 square feet and can also have partial kitchen or bathroom facilities, as specified by ordinance or can have the same meaning specified in the Uniform Building Code, referenced in the Title 24 of the California Code of Regulations.

The 2015 International Residential Code adopted by reference into the 2016 California Residential Code (CRC) allows residential dwelling units to be built considerably smaller than an Efficiency Dwelling Unit (EDU). Prior to this code change an EDU was required to have a minimum floor area not less than 220 sq. ft unless modified by local ordinance in accordance with the California Health and Safety Code which could allow an EDU to be built no less than 150 sq. ft. For more information, see HCD's Information Bulletin at http://www.hcd.ca.gov/codes/manufactured-housing/docs/ib2016-06.pdf .

Does ADU Law Apply to Charter Cities and Counties?

Yes. ADU law explicitly applies to "local agencies" which are defined as a city, county, or city and county whether general law or chartered (Section 65852.2(i)(2)).

Do ADUs Count toward the Regional Housing Need Allocation?

Yes, local governments may report ADUs as progress toward Regional Housing Need Allocation pursuant to Government Code Section 65400 based on the actual or anticipated affordability. See below frequently asked questions for JADUs for additional discussion.

Must ADU Ordinances Be Submitted to the Department of Housing and Community Development?

Yes, ADU ordinances must be submitted to the State Department of Housing and Community Development within 60 days after adoption, including amendments to existing ordinances. However, upon submittal, the ordinance is not subject to a Department review and findings process similar to housing element law (GC Section 65585)

Frequently Asked Questions: Junior Accessory Dwelling Units

Is There a Difference between ADU and JADU?

Courtesy of Lilypad Homes and Photo Credit to Jocelyn Knight

Yes, AB 2406 added Government Code Section 65852.22, providing a unique option for Junior ADUs. The bill allows local governments to adopt ordinances for JADUs, which are no more than 500 square feet and are typically bedrooms in a single-family home that have an entrance into the unit from the main home and an entrance to the outside from the JADU. The JADU must have cooking facilities, including a sink, but is not required to have a private bathroom. Current law does not prohibit local governments from adopting an ordinance for a JADU, and this bill explicitly allows, not requires, a local agency to do so. If the ordinance requires a permit, the local agency shall not require additional parking or charge a fee for a water or sewer connection as a condition of granting a permit for a JADU. For more information, see below.

ADUs and JADUs

REQUIREMENTS	ADU	JADU
Maximum Unit Size	Yes, generally up to 1,200 Square Feet or 50% of living area	Yes, 500 Square Foot Maximum
Kitchen	Yes	Yes
Bathroom	Yes	No, Common Sanitation is Allowed
Separate Entrance	Depends	Yes
Parking	Depends, Parking May Be Eliminated and Cannot Be Required Under Specified Conditions	No, Parking Cannot Be Required
Owner Occupancy	Depends, Owner Occupancy *May* Be Required	Yes, Owner Occupancy Is Required
Ministerial Approval Process	Yes	Yes
Prohibition on Sale of ADU	Yes	Yes

Why Adopt a JADU Ordinance?

JADUs offer the simplest and most affordable housing option. They bridge the gap between a roommate and a tenant by offering an interior connection between the unit and main living area. The doors between the two spaces can be secured from both sides, allowing them to be easily privatized or incorporated back into the main living area. These units share central systems, require no fire separation, and have a basic kitchen, utilizing small plug in appliances, reducing development costs. This provides flexibility and an insurance policy in homes in case additional income or housing is needed. They present no additional stress on utility services or infrastructure because they simply repurpose spare bedrooms that do not expand the homes planned occupancy. No additional address is required on the property because an interior connection remains. By adopting a JADU ordinance, local governments can offer homeowners additional options to take advantage of underutilized space and better address its housing needs.

Can JADUs Count towards the RHNA?

Yes, as part of the housing element portion of their general plan, local governments are required to identify sites with appropriate zoning that will accommodate projected housing needs in their regional housing need allocation (RHNA) and report on their progress pursuant to Government Code Section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, a JADU, including with shared sanitation facilities, that meets the census definition and is reported to the Department of Finance as part of the DOF annual City and County Housing Unit Change Survey can be credited toward the RHNA based on the appropriate income level. Local governments can track actual or anticipated affordability to assure the JADU is counted to the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit application.

> A housing unit is a house, an apartment, a mobile home or trailer, a group of rooms, or a single room that is occupied, or, if vacant, is intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live separately from any other persons in the building and which have direct access from the outside of the building or through a common hall.

Can the JADU Be Sold Independent of the Primary Dwelling?

No, the JADU cannot be sold separate from the primary dwelling.

Are JADUs Subject to Connection and Capacity Fees?

No, JADUs shall not be considered a separate or new dwelling unit for the purposes of fees and as a result should not be charged a fee for providing water, sewer or power, including a connection fee. These requirements apply to all providers of water, sewer and power, including non-municipal providers.

Local governments may adopt requirements for fees related to parking, other service or connection for water, sewer or power, however, these requirements must be uniform for all single family residences and JADUs are not considered a new or separate unit.

Are There Requirements for Fire Separation and Fire Sprinklers?

Yes, a local government may adopt requirements related to fire and life protection requirements. However, a JADU shall not be considered a new or separate unit. In other words, if the primary unit is not subject to fire or life protection requirements, then the JADU must be treated the same.

Resources

Courtesy of Karen Chapple, UC Berkeley

Attachment 1: Statutory Changes (Strikeout/Underline)

Government Code Section 65852.2

(a) (1) ~~Any~~ *A* local agency may, by ordinance, provide for the creation of ~~second~~ *accessory dwelling* units in single-family and multifamily residential zones. The ordinance ~~may~~ *shall* do ~~any~~ *all* of the following:

(A) Designate areas within the jurisdiction of the local agency where ~~second~~ *accessory dwelling* units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of ~~second~~ *accessory dwelling* units on traffic ~~flow.~~ *flow and public safety*.

(B) *(i)* Impose standards on ~~second~~ *accessory dwelling* units that include, but are not limited to, parking, height, setback, lot coverage, *landscape*, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that ~~second~~ *accessory dwelling* units do not exceed the allowable density for the lot upon which the ~~second~~ *accessory dwelling* unit is located, and that ~~second~~ *accessory dwelling* units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit is not intended for sale separate from the primary residence and may be rented.

(ii) The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.

(iii) The accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(iv) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to a accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use ~~permits. Nothing in this paragraph may be construed to require a local government to adopt or amend an ordinance for the creation of ADUs.~~ *permits, within 120 days after receiving the application*. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of ~~ADUs.~~ *an accessory dwelling unit*.

~~(b)~~ *(4)* ~~(1)~~ *An* ~~When~~ *existing ordinance governing the creation of an accessory dwelling unit by* a local agency ~~which has not adopted an ordinance governing ADUs in accordance with subdivision (a) or (c) receives its first application on or after July 1, 1983, for a permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to this subdivision unless it~~ *or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency* adopts an ordinance ~~in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding Section 65901 or 65906, every local agency shall grant a variance or special use permit for the creation of a ADU if the ADU complies with all of the following:~~ *that complies with this section*.

~~(A) The unit is not intended for sale and may be rented.~~

~~(B) The lot is zoned for single-family or multifamily use.~~

~~(C) The lot contains an existing single-family dwelling.~~

~~(D) The ADU is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.~~

~~(E) The increased floor area of an attached ADU shall not exceed 30 percent of the existing living area.~~

~~(F) The total area of floorspace for a detached ADU shall not exceed 1,200 square feet.~~

~~(G) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.~~

~~(H) Local building code requirements which apply to detached dwellings, as appropriate.~~

~~(I) Approval by the local health officer where a private sewage disposal system is being used, if required.~~

~~(2)~~ *(5)* No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

~~(3)~~ *(6)* This subdivision establishes the maximum standards that local agencies shall use to evaluate ~~proposed ADUs on lots~~ *a proposed accessory dwelling unit on a lot* zoned for residential use ~~which contain~~ *that contains* an existing single-family dwelling. No additional standards, other than those provided in this ~~subdivision or subdivision (a),~~ *subdivision,* shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an ~~owner-occupant.~~ *owner-occupant or that the property be used for rentals of terms longer than 30 days.*

~~(4)~~ *(7)* ~~No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement this subdivision. Any~~ *A* local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of ADUs *an accessory dwelling unit* if these provisions are consistent with the limitations of this subdivision.

~~(5)~~ *(8)* ~~A ADU which conforms to the requirements of~~ *An accessory dwelling unit that conforms to* this subdivision shall *be deemed to be an accessory use or an accessory building and shall* not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use ~~which~~ *that* is consistent with the existing general plan and zoning designations for the lot. The ~~ADUs~~ *accessory dwelling unit* shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

~~(c)~~ *(b)* ~~No~~ *When a* local agency ~~shall adopt an ordinance which totally precludes ADUs within single-family or multifamily zoned areas unless the ordinance contains findings acknowledging that the ordinance may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing ADUs within single-family and multifamily zoned areas justify adopting the ordinance.~~ *that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives its first application on or after July 1, 1983, for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.*

~~(d)~~ *(c)* A local agency may establish minimum and maximum unit size requirements for both attached and detached ~~second~~ *accessory dwelling* units. No minimum or maximum size for ~~a second~~ *an accessory dwelling* unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings ~~which~~ *that* does not permit at least an efficiency unit to be constructed in compliance with local development standards. *Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.*

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the existing primary residence or an existing accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) ~~Parking requirements for ADUs shall not exceed one parking space per unit or per bedroom. Additional parking may be required provided that a finding is made that the additional parking requirements are directly related to the~~

~~use of the ADU and are consistent with existing neighborhood standards applicable to existing dwellings. Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.~~ *Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a single-family residential zone one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.*

(f) *(1)* Fees charged for the construction of ~~second~~ *accessory dwelling* units shall be determined in accordance with Chapter 5 (commencing with Section~~66000).~~ *66000) and Chapter 7 (commencing with Section 66012)*.

(2) Accessory dwelling units shall not be considered new residential uses for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (e), a local agency shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (e), a local agency may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ~~ADUs.~~ *an accessory dwelling unit*.

(h) Local agencies shall submit a copy of the ~~ordinances~~ *ordinance* adopted pursuant to subdivision (a) ~~or (c)~~ to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) "Living ~~area,"~~ *area"* means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) ~~"Second~~ *"Accessory dwelling* unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. ~~A second~~ *An accessory dwelling* unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for ~~second~~ *accessory dwelling* units.

Government Code Section 65852.22.

(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence already built on the lot.

(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) 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.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the existing walls of the structure, and require the inclusion of an existing bedroom.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the structure, with an interior entry to the main living area. A permitted junior accessory dwelling may include a second interior doorway for sound attenuation.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

(A) A sink with a maximum waste line diameter of 1.5 inches.

(B) A cooking facility with appliances that do not require electrical service greater than 120 volts, or natural or propane gas.

(C) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine whether the junior accessory dwelling unit is in compliance with applicable building standards.

(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. A permit shall be issued within 120 days of submission of an application for a

permit pursuant to this section. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(d) For the purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(e) For the purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(g) For purposes of this section, the following terms have the following meanings:

(1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

Attachment 2: Sample ADU Ordinance

Section XXX1XXX: Purpose

This Chapter provides for accessory dwelling units on lots developed or proposed to be developed with single-family dwellings. Such accessory dwellings contribute needed housing to the community's housing stock. Thus, accessory dwelling units are a residential use which is consistent with the General Plan objectives and zoning regulations and which enhances housing opportunities, including near transit on single family lots.

Section XXX2XXX: Applicability

The provisions of this Chapter apply to all lots that are occupied with a single family dwelling unit and zoned residential. Accessory dwelling units do exceed the allowable density for the lot upon which the accessory dwelling unit is located, and are a residential use that is consistent with the existing general plan and zoning designation for the lot.

Section XXX3XXX: Development Standards

Accessory Structures within Existing Space

An accessory dwelling unit within an existing space including the primary structure, attached or detached garage or other accessory structure shall be permitted ministerially with a building permit regardless of all other standards within the Chapter if complying with:

1. Building and safety codes
2. Independent exterior access from the existing residence
3. Sufficient side and rear setbacks for fire safety.

Accessory Structures (Attached and Detached)

General:

1. The unit is not intended for sale separate from the primary residence and may be rented.
2. The lot is zoned for residential and contains an existing, single-family dwelling.
3. The accessory dwelling unit is either attached to the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.
4. The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.
5. The total area of floor space for a detached accessory dwelling unit shall not exceed 1,200 square feet.
6. Local building code requirements that apply to detached dwellings, as appropriate.
7. No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
8. No setback shall be required for an existing garage that is converted to a accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.
9. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence and may employ alternative methods for fire protection.

Parking:

1. Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking, including on an existing driveway or in setback areas, excluding the non-driveway front yard setback.
2. Parking is not required in the following instances:
    - The accessory dwelling unit is located within one-half mile of public transit, including transit stations and bus stations.

- The accessory dwelling unit is located in the WWWW Downtown, XXX Area, YYY Corridor and ZZZ Opportunity Area.
- The accessory dwelling unit is located within an architecturally and historically significant historic district.
- When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- When there is a car share vehicle located within one block of the accessory dwelling unit.

3. Replacement Parking: When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an accessory dwelling unit, replacement parking shall not be required and may be located in any configuration on the same lot as the accessory dwelling unit.

Section XXX4XXX: Permit Requirements

ADUs shall be permitted ministerially, in compliance with this Chapter within 120 days of application. The Community Development Director shall issue a building permit or zoning certificate to establish an accessory dwelling unit in compliance with this Chapter if all applicable requirements are met in Section XXX3XXXXX, as appropriate. The Community Development Director may approve an accessory dwelling unit that is not in compliance with Section XXX3XXXX as set forth in Section XXX5XXXX. The XXXX Health Officer shall approve an application in conformance with XXXXXX where a private sewage disposal system is being used.

Section XXX5XXX: Review Process for Accessory Structure Not Complying with Development Standards

An accessory dwelling unit that does not comply with standards in Section XXX3XX may permitted with a zoning certificate or an administrative use permit at the discretion of the Community Development Director subject to findings in Section XXX6XX

Section XXX6XXX: Findings

A. In order to deny an administrative use permit under Section XXX5XXX, the Community Development Director shall find that the Accessory Dwelling Unit would be detrimental to the public health and safety or would introduce unreasonable privacy impacts to the immediate neighbors.

B. In order to approve an administrative use permit under Section XXX5XXX to waive required accessory dwelling unit parking, the Community Development Director shall find that additional or new on-site parking would be detrimental, and that granting the waiver will meet the purposes of this Chapter.

Section XXX7XXX: Definitions

(1) "Living area means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(3) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(4) (1) "Existing Structure" for the purposes of defining an allowable space that can be converted to an ADU means within the four walls and roofline of any structure existing on or after January 1, 2017 that can be made safely habitable under local building codes at the determination of the building official regardless of any non-compliance with zoning standards.

Attachment 3: Sample JADU Ordinance

(Lilypad Homes at http://lilypadhomes.org/)

Draft Junior Accessory Dwelling Units (JADU) – Flexible Housing

Findings:

1. Causation: Critical need for housing for lower income families and individuals given the high cost of living and low supply of affordable homes for rent or purchase, and the difficulty, given the current social and economic environment, in building more affordable housing
2. Mitigation: Create a simple and inexpensive permitting track for the development of junior accessory dwelling units that allows spare bedrooms in homes to serve as a flexible form of infill housing
3. Endangerment: Provisions currently required under agency ordinances are so arbitrary, excessive, or burdensome as to restrict the ability of homeowners to legally develop these units therefore encouraging homeowners to bypass safety standards and procedures that make the creation of these units a benefit to the whole of the community
4. Co-Benefits: Homeowners (particularly retired seniors and young families, groups that tend to have the lowest incomes) – generating extra revenue, allowing people facing unexpected financial obstacles to remain in their homes, housing parents, children or caregivers; Homebuyers - providing rental income which aids in mortgage qualification under new government guidelines; Renters – creating more low-cost housing options in the community where they work, go to school or have family, also reducing commute time and expenses; Municipalities – helping to meet RHNA goals, increasing property and sales tax revenue, insuring safety standard code compliance, providing an abundant source of affordable housing with no additional infrastructure needed; Community - housing vital workers, decreasing traffic, creating economic growth both in the remodeling sector and new customers for local businesses; Planet - reducing carbon emissions, using resources more efficiently;
5. Benefits of Junior ADUs: offer a more affordable housing option to both homeowners and renters, creating economically healthy, diverse, multi-generational communities;

Therefore the following ordinance is hereby enacted:

This Section provides standards for the establishment of junior accessory dwelling units, an alternative to the standard accessory dwelling unit, permitted as set forth under State Law AB 1866 (Chapter 1062, Statutes of 2002) Sections 65852.150 and 65852.2 and subject to different provisions under fire safety codes based on the fact that junior accessory dwelling units do not qualify as "complete independent living facilities" given that the interior connection from the junior accessory dwelling unit to the main living area remains, therefore not redefining the single-family home status of the dwelling unit.

A) *Development Standards.* Junior accessory dwelling units shall comply with the following standards, including the standards in Table below:

   1) *Number of Units Allowed.* Only one accessory dwelling unit or, junior accessory dwelling unit, may be located on any residentially zoned lot that permits a single-family dwelling except as otherwise regulated or restricted by an adopted Master Plan or Precise Development Plan. A junior accessory dwelling unit may only be located on a lot which already contains one legal single-family dwelling.
   2) *Owner Occupancy:* The owner of a parcel proposed for a junior accessory dwelling unit shall occupy as a principal residence either the primary dwelling or the accessory dwelling, except when the home is held by an agency such as a land trust or housing organization in an effort to create affordable housing.
   3) *Sale Prohibited:* A junior accessory dwelling unit shall not be sold independently of the primary dwelling on the parcel.

4) *Deed Restriction:* A deed restriction shall be completed and recorded, in compliance with Section B below.
5) *Location of Junior Accessory Dwelling Unit:* A junior accessory dwelling unit must be created within the existing walls of an existing primary dwelling, and must include conversion of an existing bedroom.
6) *Separate Entry Required:* A separate exterior entry shall be provided to serve a junior accessory dwelling unit.
7) *Interior Entry Remains:* The interior connection to the main living area must be maintained, but a second door may be added for sound attenuation.
8) *Kitchen Requirements:* The junior accessory dwelling unit shall include an efficiency kitchen, requiring and limited to the following components:
   a) A sink with a maximum waste line diameter of one-and-a-half (1.5) inches,
   b) A cooking facility with appliance which do not require electrical service greater than one-hundred-and-twenty (120) volts or natural or propane gas, and
   c) A food preparation counter and storage cabinets that are reasonable to size of the unit.
9) Parking: No additional parking is required beyond that required when the existing primary dwelling was constructed.

Development Standards for Junior Accessory Dwelling Units

SITE OR DESIGN FEATURE	SITE AND DESIGN STANDARDS
Maximum unit size	500 square feet
Setbacks	As required for the primary dwelling unit
Parking	No additional parking required

B) *Deed Restriction:* Prior to obtaining a building permit for a junior accessory dwelling unit, a deed restriction, approved by the City Attorney, shall be recorded with the County Recorder's office, which shall include the pertinent restrictions and limitations of a junior accessory dwelling unit identified in this Section. Said deed restriction shall run with the land, and shall be binding upon any future owners, heirs, or assigns. A copy of the recorded deed restriction shall be filed with the Department stating that:
   1) The junior accessory dwelling unit shall not be sold separately from the primary dwelling unit;
   2) The junior accessory dwelling unit is restricted to the maximum size allowed per the development standards;
   3) The junior accessory dwelling unit shall be considered legal only so long as either the primary residence, or the accessory dwelling unit, is occupied by the owner of record of the property, except when the home is owned by an agency such as a land trust or housing organization in an effort to create affordable housing;
   4) The restrictions shall be binding upon any successor in ownership of the property and lack of compliance with this provision may result in legal action against the property owner, including revocation of any right to maintain a junior accessory dwelling unit on the property.

C) *No Water Connection Fees:* No agency should require a water connection fee for the development of a junior accessory dwelling unit. An inspection fee to confirm that the dwelling unit complies with development standard may be assessed.

D) *No Sewer Connection Fees:* No agency should require a sewer connection fee for the development of a junior accessory dwelling unit. An inspection fee to confirm that the dwelling unit complies with development standard

may be assessed.

E) *No Fire Sprinklers and Fire Attenuation:* No agency should require fire sprinkler or fire attenuation specifications for the development of a junior accessory dwelling unit. An inspection fee to confirm that the dwelling unit complies with development standard may be assessed.

Definitions of Specialized Terms and Phrases.

"Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(1) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(2) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

"Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

Attachment 4: State Standards Checklist (As of January 1, 2017)

YES/NO	STATE STANDARD*	GOVERNMENT CODE SECTION
	Unit is not intended for sale separate from the primary residence and may be rented.	65852.2(a)(1)(D)(i)
	Lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.	65852.2(a)(1)(D))ii)
	Accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.	65852.2(a)(1)(D)(iii)
	Increased floor area of an attached accessory dwelling unit does not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.	65852.2(a)(1)(D)(iv)
	Total area of floor space for a detached accessory dwelling unit dies not exceed 1,200 square feet.	65852.2(a)(1)(D)(v)
	Passageways are not required in conjunction with the construction of an accessory dwelling unit.	65852.2(a)(1)(D)(vi)
	Setbacks are not required for an existing garage that is converted to an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines are not required for an accessory dwelling unit that is constructed above a garage.	65852.2(a)(1)(D)(vii)
	(Local building code requirements that apply to detached dwellings are met, as appropriate.	65852.2(a)(1)(D)(viii)
	Local health officer approval where a private sewage disposal system is being used, if required.	65852.2(a)(1)(D)(ix)
	Parking requirements do not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.	65852.2(a)(1)(D)(x)

* Other requirements may apply. See Government Code Section 65852.2

Attachment 5: Bibliography

Reports

ACCESSORY DWELLING UNITS: CASE STUDY (26 pp.)

By United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities, and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

THE MACRO VIEW ON MICRO UNITS (46 pp.)

By Bill Whitlow, et al. – Urban Land Institute (2014)
Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013 to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

RESPONDING TO CHANGING HOUSEHOLDS: Regulatory Challenges for Micro-units and Accessory Dwelling Units (76 pp.)

By Vicki Been, Benjamin Gross, and John Infranca (2014)
New York University: Furman Center for Real Estate & Urban Policy
Library Call # D55 3 I47 2014

This White Paper fills two gaps in the discussion regarding compact units. First, we provide a detailed analysis of the regulatory and other challenges to developing both ADUs and micro-units, focusing on five cities: New York; Washington, DC; Austin; Denver; and Seattle. That analysis will be helpful not only to the specific jurisdictions we study, but also can serve as a model for those who what to catalogue regulations that might get in the way of the development of compact units in their own jurisdictions. Second, as more local governments permit or encourage compact units, researchers will need to evaluate how well the units built serve the goals proponents claim they will.

SCALING UP SECONDARY UNIT PRODUCTION IN THE EAST BAY: Impacts and Policy Implications (25 pp.)

By Jake Webmann, Alison Nemirow, and Karen Chapple (2012)
UC Berkeley: Institute of Urban and Regional Development (IURD)
Library Call # H44 1.1 S33 2012

This paper begins by analyzing how many secondary units of one particular type, detached backyard cottages, might be built in the East Bay, focusing on the Flatlands portions of Berkeley, El Cerrito, and Oakland. We then investigate the potential impacts of scaling up the strategy with regard to housing affordability, smart growth, alternative transportation, the economy, and city budgets. A final section details policy recommendations, focusing on regulatory reforms and other actions cities can take to encourage secondary unit construction, such as promoting carsharing programs, educating residents, and providing access to finance.

SECONDARY UNITS AND URBAN INFILL: A literature Review (12 pp.)

By Jake Wegmann and Alison Nemirow (2011)
UC Berkeley: IURD
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.

YES, BUT WILL THEY LET US BUILD? The Feasibility of Secondary Units in the East Bay (17 pp.)

By Alison Nemirow and Karen Chapple (2012)
UC Berkeley: IURD
Library Call # H44.5 1.1 Y47 2012

This paper begins with a discussion of how to determine the development potential for secondary units, and then provides an overview of how many secondary units can be built in the East Bay of San Francisco Bay Area under current regulations. The next two sections examine key regulatory barriers in detail for the five cities in the study (Albany, Berkeley, El Cerrito, Oakland, and Richmond), looking at lot size, setbacks, parking requirements, and procedural barriers. A sensitivity analysis then determines how many units could be built were the regulations to be relaxed.

YES IN MY BACKYARD: Mobilizing the Market for Secondary Units (20 pp.)

By Karen Chapple, J. Weigmann, A. Nemirow, and C. Dentel-Post (2011)
UC Berkeley: Center for Community Innovation.
Library Call # B92 1.1 Y47 2011

This study examines two puzzles that must be solved in order to scale up a secondary unit strategy: first, how can city regulations best enable their construction? And second, what is the market for secondary units? Because parking is such an important issue, we also examine the potential for secondary unit residents to rely on alternative transportation modes, particular car share programs. The study looks at five adjacent cities in the East Bay of the San Francisco Bay Area (Figure 1) -- Oakland, Berkeley, Albany, El Cerrito, and Richmond -- focusing on the areas within ½ mile of five Bay Area Rapid Transit (BART) stations.

Journal Articles and Working Papers:

BACKYARD HOMES LA (17 pp.)

By Dana Cuff, Tim Higgins, and Per-Johan Dahl, Eds. (2010)
Regents of the University of California, Los Angeles.
City Lab Project Book.

DEVELOPING PRIVATE ACCESSORY DWELLINGS (6 pp.)

By William P. Macht. Urbanland online. (June 26, 2015)
Library Location: Urbanland 74 (3/4) March/April 2015, pp. 154-161.

GRANNY FLATS GAINING GROUND (2 pp.)

By Brian Barth. Planning Magazine: pp. 16-17. (April 2016)
Library Location: Serials

"HIDDEN" DENSITY: THE POTENTIAL OF SMALL-SCALE INFILL DEVELOPMENT (2 pp.)

By Karen Chapple (2011)
UC Berkeley: IURD Policy Brief.
Library Call # D44 1.2 H53 2011

California's implementation of SB 375, the Sustainable Communities and Climate Protection Act of 2008, is putting new pressure on communities to support infill development. As metropolitan planning organizations struggle to communicate the need for density, they should take note of strategies that make increasing density an attractive choice for neighborhoods and regions.

HIDDEN DENSITY IN SINGLE-FAMILY NEIGHBORHOODS: Backyard cottages as an equitable smart growth strategy (22 pp.)

By Jake Wegmann and Karen Chapple. Journal of Urbanism 7(3): pp. 307-329. (2014)

Abstract (not available in full text): Secondary units, or separate small dwellings embedded within single-family residential properties, constitute a frequently overlooked strategy for urban infill in high-cost metropolitan areas in the United States. This study, which is situated within California's San Francisco Bay Area, draws upon data collected from a homeowners' survey and a Rental Market Analysis to provide evidence that a scaled-up strategy emphasizing one type of secondary unit – the backyard cottage – could yield substantial infill growth with minimal public subsidy. In addition, it is found that this strategy compares favorably in terms of affordability with infill of the sort traditionally favored in the 'smart growth' literature, i.e. the construction of dense multifamily housing developments.

RETHINKING PRIVATE ACCESSORY DWELLINGS (5 pp.)

By William P. Macht. Urbanland online. (March 6, 2015)
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

ADUS AND LOS ANGELES' BROKEN PLANNING SYSTEM (4 pp.)

By CARLYLE W. Hall. The Planning Report. (April 26, 2016).
Land-use attorney Carlyle W. Hall comments on building permits for accessory dwelling units.

News:

HOW ONE COLORADO CITY INSTANTLY CREATED AFFORDABLE HOUSING

By Anthony Flint. The Atlantic-CityLab. (May 17, 2016).

In Durango, Colorado, zoning rules were changed to allow, for instance, non-family members as residents in already-existing accessory dwelling units.

NEW HAMPSHIRE WINS PROTECTIONS FOR ACCESSORY DWELLING UNITS (1 p.)

NLIHC (March 28, 2016)

Affordable housing advocates in New Hampshire celebrated a significant victory this month when Governor Maggie Hassan (D) signed Senate Bill 146, legislation that allows single-family homeowners to add an accessory

dwelling unit as a matter of right through a conditional use permit or by special exception as determined by their municipalities. The bill removes a significant regulatory barrier to increasing rental homes at no cost to taxpayers.

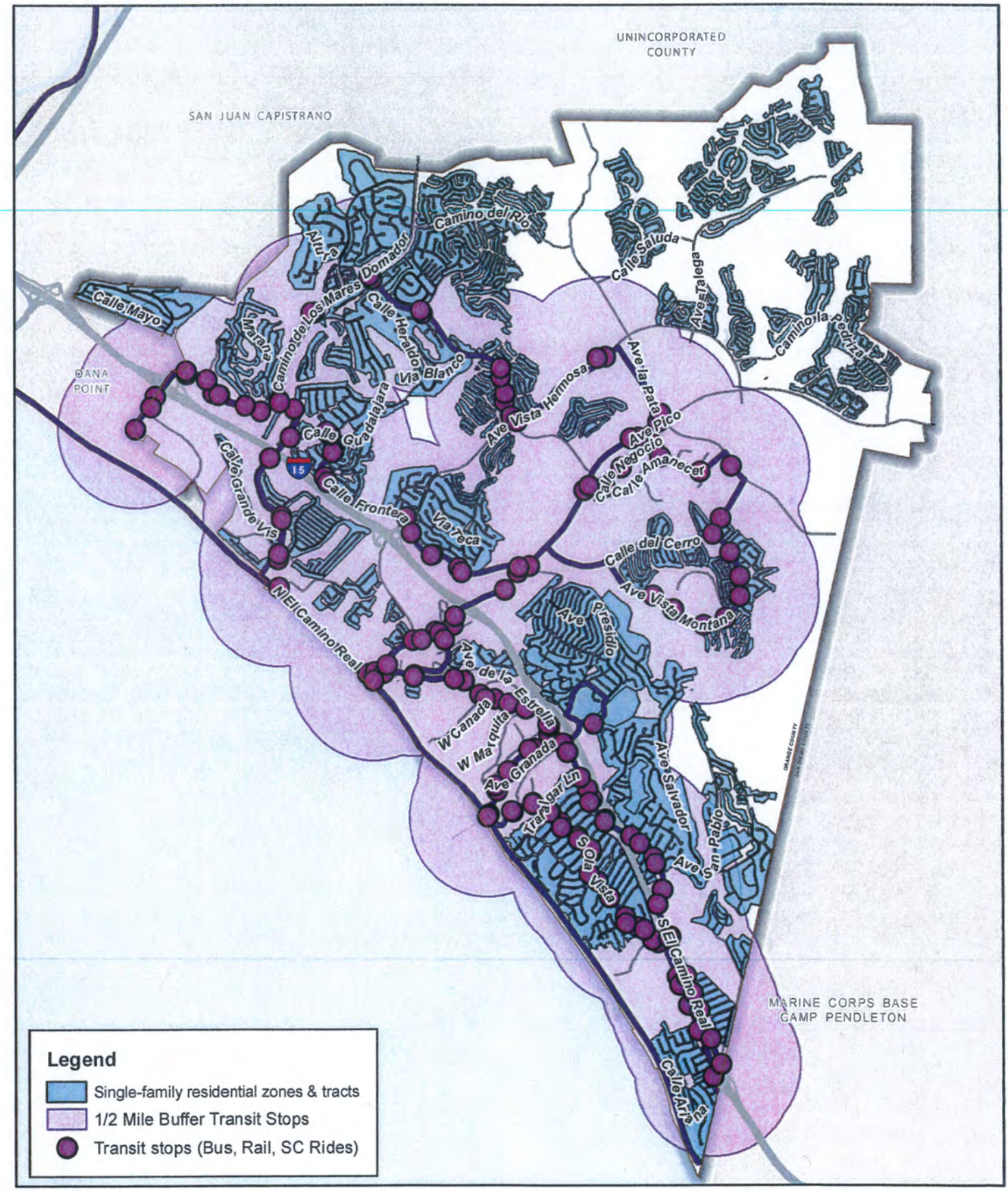
NEW IN-LAW SUITE RULES BOOST AFFORDABLE HOUSING IN SAN FRANCISCO. (3 pp.)

By Rob Poole. Shareable. (June 10, 2014).

The San Francisco Board of Supervisors recently approved two significant pieces of legislation that support accessory dwelling units (ADUs), also known as "in-law" or secondary units, in the city...

USING ACCESSORY DWELLING UNITS TO BOLSTER AFFORDABLE HOUSING (3 pp.)

By Michael Ryan. Smart Growth America. (December 12, 2014).



ADU Analysis City
Transit coverage & Residential Zones

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Table summarizing ADU legislation and City's discretion to regulate ADUs

Category	A city must.....	But it has discretion to....	Proposed Ordinance
Location	Allow ADUs in at least some areas zoned for single-family or multifamily residential.	May exclude areas where ADUs are allowed based on supported findings of substantial evidence about health and safety.	Allow ADUs in residential districts with an existing (or proposed) detached single-family residential unit on a parcel zoned for such purposes.
Review	Review of all ADUs ministerially (no discretionary review or hearing) and approve or deny within 120 days of application.	Require a deed restriction.	In addition to ministerial review, a deed restriction is required for new units.
Lot development	Allow ADUs to be detached, attached, or located within (as in converted from) the existing living area of the primary residence.	Restrict ADUs to one per lot.	Restricts ADUs to one per lot.
Rentals and sales	Allow the ADU to be rented.	Prohibit short-term rentals.	A deed restriction will prohibit the sale of the ADU separate from the primary dwelling and allow short-term rentals where designated allowable.
Occupancy	Not limit the number of occupants, short of the limits imposed by the Building Code.	Restrict occupancy to an owner-occupant.	A deed restriction will restrict occupancy to an owner-occupant.
Conversion of existing living space	Approve a building permit for any ADU that: 1. Is the only ADU on a residential lot 2. Lies entirely within the existing space of a single-family residence or accessory structure 3. Has its own exterior access, and 4. Provides side and rear setbacks that are sufficient for fire safety (typical setbacks for the zone are considered sufficient). *These ADUs are exempt from most other requirements.*		Requirements are the same as State Law.
Parking requirement	Not require parking for an ADU: 1. That is within a half-mile of public transit; or 2. That is in an architecturally or historically significant district, or 3. That is in an existing primary residence or an existing accessory structure, or 4. When an on-street parking permit is required but not offered to the occupant of the ADU, or 5. When there is a car share vehicle located within one block of the ADU.	Require up to one parking space per unit or per ADU bedroom (whichever is less), except where parking requirements are prohibited.	Requirement to provide one parking space per unit or per ADU bedroom (whichever is less), except where parking requirements are prohibited.
Parking location	Accept tandem parking in setbacks and existing driveways to satisfy ADU parking requirements if those methods of parking are allowed in any residential zone for any use.	Existing law also requires specified offstreet parking to be permitted for an accessory dwelling unit unless, among other things, that specified offstreet parking is not allowed anywhere else in the jurisdiction.	Tandem parking is not prohibited (i.e. driveway in front of garage).
Height		Set height restrictions for ADUs	Any non-exempt ADU must meet the same height standards of accessory structures (15 feet max unless approved through discretionary CUP review).

Table summarizing ADU legislation and City's discretion to regulate ADUs

Category	A city must.....	But it has discretion to....	Proposed Ordinance
Setbacks	Allow a garage-to-ADU conversion, without imposing setbacks on the former garage.	Require setbacks up to 5 feet for an ADU that is built above the existing garage. Requires setbacks minimums for detached and attached ADUs.	Requires setbacks up to 5 feet for an ADU that is built above the existing garage. Any non-exempt ADU must meet the same setback standards of accessory structures under section 9.144.080 (generally, only setbacks sufficient for fire safety).
Lot coverage		Set lot coverage standards for ADUs.	The ADU must satisfy the lot coverage standards of the applicable zone generally. It must also satisfy the Building Site Coverage restriction that applies to accessory structures and buildings in the zone.
Size of the ADU	Allow the increase in floor area of an attached ADU up to 50 percent (50%) of the existing living area with a maximum increase in floor area of 1,200 square feet. The total area of floor space for a detached accessory dwelling unit shall not exceed 1,200 square feet.	Current law allows, but does not require, local governments to adopt an ordinance for a Junior ADU (efficiency unit) which has a 500 square foot maximum and no common kitchen or sanitation is required.	Allow the increase in floor area of an attached ADU up to 50 percent of the existing living area with a maximum increase in floor area of 1,200 square feet. The total area of floor space for a detached accessory dwelling unit shall not exceed 1,200 square feet. Additional provisions are proposed for JADUs.