



# Attachment 2

## STAFF REPORT TO THE PLANNING COMMISSION

**DATE:** Planning Commission Meeting of January 16, 2018

**TO:** Members of the Planning Commission

**SUBMITTED BY:** Holly Smyth, Planning Director  
Patrick Tang, City Attorney

**SUBJECT:** Continued Study Session on Accessory Dwelling Unit Policy to Conform to State Law

### **RECOMMENDATION:**

Receive a brief presentation and discuss draft policy changes regarding the City's current ordinance regulating Accessory Dwelling Units (ADU's).

### **Background:**

As discussed at the Planning Commission's meeting of August 7, 2017, the State has passed legislation that limits the ability of local government to regulate the construction of new Accessory Dwelling Units, also commonly referred to as "second units". The State considers the legislation a way of helping to address the State's housing crisis, particularly as it relates to affordable housing. The new law went into effect on January 1, 2017. It contains specific language that renders "null and void" all existing City ordinances regulating ADU's, unless the local ordinance is updated to be consistent with the requirements of the new state legislation.

In response to the new ADU state legislation, staff brought to the Planning Commission for initial discussion a report detailing the state law and the new requirements for local jurisdictions. A copy of the prior staff report is provided as Attachment 1. In consultation with legal counsel, staff has prepared a draft ordinance that meets the requirements of state law and is responsive to comments from the Commissioners. The draft ordinance is provided as Attachment 2.

### **Discussion:**

The statutory scheme governing ADUs (Gov. Code sections 65852.1 et seq) establishes requirements for three types of ADUs:

1. ADUs within existing structures
2. ADUs attached to existing structures
3. Detached ADUs

To avoid confusion and to promote consistency, the draft ordinance being presented to the Planning Commission adopts the state law distinctions regarding ADU types so that it is clear (i) what type of ADU the applicant is seeking to be permitted, and (ii) what development standards apply to that type of ADU. A summary of the three types of ADUs follows:

### **I. ADUs within existing structures**

This type of ADU is created wholly within an existing structure. State law requires that such an existing structure include a single family residence, accessory structure, or a garage. No "new construction" would be required *outside* of the existing structure (i.e. only walls or other indoor improvements) -- so there is no square footage limit for this type. ADUs within existing structures only require building permits (i.e. NOT an administrative use permit, like the other two types of ADUs), which is a state law requirement. This type of ADU must still meet applicable building and safety codes, have independent exterior access, and "sufficient" side/rear setbacks for fire safety. The City cannot require this type of ADU to create new/separate utility/sewer connections.

### **II. ADUs attached to existing structures.**

Per state law, this type of ADU cannot exceed 50% of the existing living area (as defined) with a maximum increase of 1200 square feet. State law allows the City to decide whether it wants to require separate utility/sewer connections. The Public Works Director sees no need to require separate utilities. As for separate sewer connections, the Public Works Director would like that determination made on a case-by-case basis, and subject to the City's approval, depending on the building/construction conditions existing at the location.

### **III. Detached ADUs.**

This type of ADU is completely detached from the existing structure, and cannot be more than 800 square feet. Similar to the attached type, the City can decide whether it wants to require separate utility/sewer connections. The Public Works Director sees no need to require separate utilities.

As for sewer connections, the Public Works Director would like that determination made on a case-by-case basis, and subject to the City's approval, depending on the building/construction conditions existing at the location.

### **Other requirements.**

All ADUs are required to comply with the following requirements. These requirements are specified in the proposed ordinance:

Design Standards — ADUs must conform to design and architectural characteristics of the existing single family home, building materials, paint color, etc.

Fire sprinklers — ADUs must comply with all applicable state and local fire safety provisions. State law does not allow the City to require sprinkler installation in ADUs unless sprinklers are also required for the existing residence. The ordinance currently contains a requirement for sprinklers when the existing residence is required to have sprinklers.

Parking — The parking standards in the ordinance mirror state law requirements, so they must be included "as-is."

Fees — The ordinance requires payment of all city impact fees, subject to state law requirements that govern calculation of utility/sewer connection and capacity fees.

### **ATTACHMENTS:**

1. Staff Report and Attachments from meeting of August 7, 2017
2. Draft ADU ordinance.



## **STAFF REPORT TO THE PLANNING COMMISSION**

**DATE:** August 7, 2017

**TO:** Chairperson Morrison and Members of the Planning Commission

**SUBMITTED BY:** Holly Smyth, Planning Director

**SUBJECT:** Study session on recent changes to State Law that regulate Accessory Dwelling Units, and the implication of these changes for the City's current Accessory Dwelling Unit Ordinance

### **RECOMMENDED ACTION:**

Receive a brief presentation by City staff summarizing the relevant issues, discuss the implications of the new State legislation that impacts the City's current ordinance regulating Accessory Dwelling Units (ADU's), and provide direction to staff as appropriate concerning this matter.

### **Background:**

In 2016 the State passed legislation (SB 1069 and AB 2299), that limits the ability of local government to regulate the construction of new Accessory Dwelling Units, also commonly referred to as "second units". The State considers this legislation as a way of helping to address the State's housing crisis, particularly as it relates to affordable housing. Both SB 1069 and AB 2299 went into effect on January 1, 2017. AB 2299 contains specific language that renders "null and void" all existing City ordinances regulating ADU's, unless the local ordinance is updated to be consistent with the requirements of the new legislation.

Given these circumstances, the City needs to make a decision whether to update its ordinance regulating ADU's to be consistent with the new State laws, or to take no such action and have ADU's in Hercules regulated solely by the new State legislation. From a staff perspective, there are clear advantages to the City updating/revising its current ADU regulations, as opposed to taking no action. This is due to the fact that the new State law allows cities to put in place regulations as long as the regulations don't conflict with State law. While any updated City regulations will, given the new State laws, be more limited in scope than the City's now "preempted" ordinance, taking no action would result in the City having little control over ADU's being built in Hercules other than the default State requirements. For example, the State regulations in the absence of any local ordinance to the contrary, could be interpreted to allow a travel trailer parked in the back yard of a single family home to be considered a legal ADU. Looked at from another perspective, there really is no downside for the City to go through the process of updating its ADU ordinance, other than the time and resources needed to do the work.

In addition to SB 1069 and AB2299, the State Legislature passed another bill in 2016, AB 2406, that gives local jurisdictions the flexibility of permitting what are referred to as "Junior Accessory Dwelling Units" (JADU's). These are second units that are built entirely within an existing residential structure and cannot

exceed 500 square feet. This legislation is different than SB 1069 in that its provisions are optional. A City can decide whether or not it wants to amend its accessory dwelling unit ordinance to permit JADU's. It should be noted that the City's current preempted ordinance allows ADU's to be built within an existing structure. The City could implement the provisions of AB2406 as part of the ADU Ordinance update process. The details of how this could work would be addressed with the ADU Ordinance update.

### **Current ADU Ordinance Requirements:**

It's instructive to compare the current City Ordinance regulating ADU's with the new State requirements. The following table provides a summary of the more significant implications of the new State legislation. It should be emphasized that the following comparisons between current City requirements and the new State legislation are "tentative" in the sense that a detailed legal review will be required prior to any formal changes to the City's Accessory Dwelling Unit regulations. Accessory Dwelling units are regulated by the City Zoning Code Section 35.320 "Second Residential Units". A copy of this section of the Zoning Code is attached (see Attachment 1) as well as Section 35.210-Accessory Structures and Uses for reference.

Table: Comparison of City Ordinance and State Legislation Concerning Accessory Dwelling Units

<b>City Requirement</b>	<b>City's Current Ordinance</b>	<b>Recent State Legislation</b>
1) Approval process for ADU	Administrative use permit and design review required.	No discretionary permit required so long as there is independent exterior access.
2) Maximum size of ADU	A maximum of 800 square feet, plus an ADU may not exceed 30% of the size of the main residential unit.	A maximum size of 1,200 square feet plus may not exceed 50% of the size of the main residential unit.
3) Development standards applicable to ADU	ADU must conform to the setback, building height and other requirements for single family homes.	No specific setback or other requirements, other than Building Code and Fire Code requirements must be met.
4) Parking requirements	One off street parking space for the ADU.	No parking required if ADU is within ½ mile from public transit, or 1 block of a car share area, or if ADU is in historic district, or if ADU is part of main structure.
5) Use of garage for ADU	Garage cannot be converted into an ADU without constructing a replacement garage.	Garage <u>can</u> be converted into an ADU as long as a driveway allows for parking for the main structure and potentially 1 spaces for the new accessory dwelling structure if it doesn't meet parking exemptions, which can be tandem.

### **Types of Regulations that can be Included in an Updated ADU Ordinance:**

While the new State legislation limits the City's discretion in regulating ADU's, provisions in the new State laws give local jurisdictions a fair degree of latitude in establishing requirements that allow local jurisdictions some degree of control over ADU's. In contrast, as mentioned previously, the new State regulations in the absence of a valid updated local ordinance give City's very little discretion over where and how ADU's develop in their community. The following are some of the types of regulations that a local agency can include under the new State legislation in an updated local ordinance to regulate ADU's. It is important to note that under the new State law any such regulation can't place an "undue burden" on the ability to build an ADU. Any new ordinance the City develops to regulate ADU's will require close legal scrutiny by the City Attorney to ensure it complies with the requirements and restrictions of the new State legislation. In addition, a jurisdiction is required to forward any updated local ordinance regulating ADU's to the State, although the State at this point in time will not be formally reviewing the local ordinances it receives. California Department of Housing and Community Development produced the "Accessory Dwelling Unit Memorandum, dated December 2017" to help the public understand the various provisions of the law and is found in Attachment 2.

### **Examples of Provisions that can be included in Local Ordinance:**

- A. The new legislation allows a jurisdiction to include architectural and landscape requirements for ADU's.
- B. Development standards can be established addressing such issues as establishing a minimum lot size on which an ADU can be constructed, setbacks, lot coverage, maximum floor area ratio (FAR), and maximum building height.
- C. The legislation also allows a jurisdiction to restrict constructing an ADU's in certain situations and locations. For example, if an ADU was proposed in a high traffic area where the occupant of the ADU would have to back out onto a busy street.
- D. Limits can be included to address valid public health and safety issues. An example of a public health issue would be if an ADU was proposed in an area that lacked sewer or water capacity.
- E. Require a deed restriction be placed on the property requiring owner-occupancy at the property and/or that the ADU be used exclusively for long term rentals not short term.

A local ordinance regulating ADU's would allow a jurisdiction to include these type of requirements and tailor the requirements to fit the local situation. Obviously, this would not be the case if the City did not choose to update its local ordinance to be compliant with State law, and instead relied solely on the new State legislation for ADU regulation.

### **Planning Commission Action:**

Provide direction to staff as to what eligible provisions should be integrated into a new code.

### **ATTACHMENTS:**

- 1. Section 35.320 – Second Residential Units provision of the City's Zoning Ordinance and Section 35.210 – Accessory Structures and Uses for sample criteria
- 2. Ca HCD "Accessory Dwelling Unit Memorandum", December 2016

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## **CHAPTER 35**

### **SPECIFIC LAND USE REQUIREMENTS**

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#### **35.100 Purpose and Applicability**

The purpose of this Chapter is to provide land use and development regulations for specific uses that will then be applicable to sites throughout the City. Unless noted otherwise, these standards are intended to be applied within all zoning and overlay districts.

#### **35.200 Specific Use Standards**

Zoning and overlay district development standards or performance standards in Article II will take precedence over the specific use requirements within this chapter. If there is a conflict between regulations and standards specified for a particular zoning district and the specific use standards contained within this chapter, the district specific regulations and standards shall be applied.

#### **35.210 Accessory Structures and Uses**

Accessory buildings are generally allowed in all zoning districts subject to the requirement that the use of the structure be subordinate and incidental to the principal use or structure on the site. Accessory structures may require an administrative use permit and may have conditions limiting use as determined by the land use regulations for each zoning district.

Accessory structures may be either attached to and have a common wall with the main structure on a site, or may be freestanding (i.e., not attached to the main structure). For the purposes of this Chapter, an accessory structure that is connected to the main structure by a breezeway, gazebo, shade structure, deck, or other combustible material (as that term is used in the uniform building code) shall be treated as an attached accessory structure.

1. No accessory structure shall encroach into front and side yards except as noted below.
2. No accessory structure shall be used as living quarters unless specifically allowed in this code.
3. Freestanding accessory structures located in the front half of a site shall provide the same front and side yards as required for the main structure, and, in the residential districts, shall be connected to the main structure by a breezeway not less than 6 feet in width and not more than 12 feet in height.

4. A freestanding accessory structure shall be located at least 5 feet from all side and rear property lines. Structures made with wood or other combustible material (for example, decks, gazebos and similar construction) may not be located in the 5 foot setback.
5. On a corner lot, a freestanding accessory structure shall be located at least 10 feet from the side property line adjoining the street, except that garages and carports with access from the street adjoining the side yard shall be located at least 20 feet from this side property line.
6. On a lot where the rear yard faces a public street, a freestanding accessory structure shall not be located in the rear yard setback required for the main structure.
7. The maximum height of an attached accessory structure shall be as specified for the main structure, and for a freestanding accessory structure the maximum height shall be 15 feet, except that within 10 feet of a property line, no part of the structure shall exceed 8 feet.
8. In the RS-L district, freestanding accessory structures shall cover not more than 30% of the required rear yard, unless there remains a portion of the rear yard or a side yard which has an area of not less than 20% of the site, and that the least dimension of such yard shall be at least 15 feet
9. Special Situations: The Community Development Director in consultation with the Director of Public Works and the Chief of the Rodeo-Hercules Fire Protection District (or their designated representatives) shall have the authority to approve exceptions to these regulations in the following cases. In reviewing these situations, the Community Development Director may impose any conditions needed to fulfill the intent of this subsection. Any determination may be appealed to the Planning Commission.
  - A. For a structure built out of noncombustible materials, including a spa (but not including a gazebo or any other wood structure), the 5 foot setback may be reduced, provided that the Community Development Director finds that the proposed structures will not significantly increase the fire hazard.
10. Detached and attached accessory structures under 120 square feet total for the property that meet all requirements of this section are exempt from use permit requirements. However, accessory structures with permanent foundations shall require design review through the Community Development Director. Accessory structures that are freestanding without permanent foundations such as prefabricated storage sheds do not require a use permit or design review as long as all criteria of this section are met.
11. Before approving the proposed design plans for an accessory structure with a reduced setback (as allowed by this section), pursuant to Chapter 42 Design Review, the Community Development Director shall notify the owners of parcels within 150 feet, and on the same side of the street as, the site of the proposed accessory structure that construction of an accessory structure has been proposed. If any written protest to the proposed structure is received within 15 calendar days of the mailing of such notice, the Director shall take no action regarding the structure and shall refer the matter to the Planning Commission for a public design review hearing and action.

## **35.320 Second Residential Units**

This section is intended to implement the General Plan policies which encourages second residential units on owner occupied, single family residential parcels; and is also intended to address the State's second residential unit provisions as set forth in Government Code Section 65852.1 et seq. Second residential units are commonly referred to as mother-in-law-units, granny-flats and accessory-apartments. An efficiency unit and manufactured home as respectively defined in Sections 17958.1 and 18007 of the Health and Safety Code are also considered second residential units under State law.

All second residential units are required to secure use permit and design review approval. Second residential units are allowed by administrative use permit approval in single family residential zoning districts and in other districts where there is one conforming use single family residence on the parcel.

1. A second residential unit shall consist of complete independent living facilities for one or more persons including permanent provisions for sleeping, living, eating, cooking, and sanitation. The second residential unit shall include independent heating and cooling controls; its own kitchen with sink and standard built-in or freestanding appliances, its own bathroom with bath or shower, and a separate exterior entrance.
2. A maximum of one second residential unit may be allowed on a lot containing one larger single family, owner occupied dwelling. No second residential units are allowed on lots having more than one residential unit, or on lots where the existing residential unit is a nonconforming use. The second residential unit is not intended for sale and may be rented.
3. No more than one dwelling unit on a single family residential with a second residential dwelling unit parcel may be rented or leased at one time.
4. The total floor space for a second residential unit shall contain adequate area to provide the required facilities listed in subsection 1, but not exceed 30% of the existing living area and if detached shall not exceed 800 square feet. Living area is defined as the interior habitable area of a dwelling unit including habitable basements and attics, but does not include a garage or any accessory structure.
5. The second residential unit may either be within the living area of the existing dwelling, attached to the existing dwelling, or detached from the existing dwelling.
6. A second residential unit shall conform to the applicable standards and requirements of the zoning district in which it is to be located. Requirements for building height, setbacks, yards and similar design standards that apply to the single family dwelling unit shall apply to the second residential unit.
7. A minimum of one off-street parking space shall be provided for each second residential unit in addition to the offstreet parking spaces required for the residence(s) on the site.





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.*



Courtesy of Karen Chapple, UC Berkeley

## 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 <i>May</i> 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.

~~(e)~~ (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 (e)~~ 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 XXX3XXXXX as set forth in Section XXX5XXXXX. 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 be 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 does 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 want 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).

## 35.320 Second Residential Accessory Dwelling Units

1. Purpose. This section is intended to implement the General Plan policies which encourages Accessory Dwelling second residential uUnits (ADUs) on owner-occupied, single family residential parcels, and is also intended to address the State's second residential unitADU provisions as set forth in Government Code Section 65852.1 et seq. Second residential unitsADUs are commonly referred to as second units, mother-in-law-units, grannyflats and accessory-apartments, and contribute needed housing to the City's housing stock. An efficiency unit and manufactured home as respectively defined in Sections 17958.1 and 18007 of the Health and Safety Code are also considered second residential units under State law.

2. Administrative Use Permit Required. Except as set forth in this section 35.320, aAll second residential units ADUs are required subject to secure use permit and design review approval. Second residential units are allowed by administrative use permit requirements as set forth in Chapter 50 of the Zoning Ordinance. The Planning Director shall issue an administrative use permit to ADUs in compliance with this section 35.320. approval in single family residential zoning districts and in other districts where there is one conforming use single family residence on the parcel.

### 43. Definitions.

A. Accessory Dwelling Unit (ADU). An ADU A second residential unit shall consist of complete independent living facilities for one or more persons including permanent provisions for sleeping, living, eating, cooking, and sanitation. The second residential unitUnless an ADU is located within existing residential space or accessory structure, it shall have include independent heating and cooling controls; its own kitchen with sink and standard built-in or freestanding appliances, its own bathroom with bath or shower, and a separate exterior entrance.

B. Living Area. Living area includes the interior habitable area of a dwelling unit including basements and attics, but does not include a garage or any accessory structure.

42. Lot Requirements. ADUs are allowed in single family residential zoning districts where there is exactly one single family residence on the parcel, and in other districts where there is exactly one conforming single family residence on the parcel. A maximum of one ADUsecond residential unit may isbe allowed on a lot. No Administrative Use Permit will be issued for an ADU unless and until the City receives the following:

A. Proof of owner occupancy of either the single family residence or of the ADU;

B. A copy of a recorded deed restriction that complies with Government Code section 27281.5 and states that (i) owner occupancy of the single family residence or ADU is required by this Chapter, and (ii) the ADU will not be sold separately from the single family residence; and

C. Any fees required by the City's fee schedule as it exists at the time the ADU application is filed. The City will not consider the ADU to be a new residential use when calculating utility and sewer connection fees and capacity charges, and any such connection fee or capacity charge will be proportionate to the impact of the ADU.



~~containing one larger single family, owner occupied dwelling. No second residential units are allowed on lots having more than one residential unit, or on lots where the existing residential unit is a nonconforming use. The second residential unit is not intended for sale and may be rented.~~

~~3. No more than one dwelling unit on a single family residential with a second residential dwelling unit parcel may be rented or leased at one time.~~

54. Development Standards.

A. ADUs within existing space. An ADU within an existing residential space, including the primary structure, attached or detached garage, or other accessory structure existing on January 1, 2017 shall not require an administrative use permit pursuant to this section, and shall instead only be subject to building permit requirements, only if the following requirements are met:

(i) The ADU meets all applicable building and safety codes.

(ii) The ADU has independent exterior access from the existing residence.

(iii) The ADU has sufficient side and rear setbacks for fire safety.

An ADU created under this section 5.A may, but is not required to, create new or separate utility connections.

B. Attached ADUs. ADUs attached to an existing dwelling shall ~~The total floor space for a second residential unit shall contain adequate area to provide the required facilities listed in subsection 1, but not exceed fifty percent (530%) of the existing living area, with a maximum increase in floor area of 1200 square feet. Attached ADUs shall meet all applicable building code requirements. For ADUs constructed above an existing garage, the required setback from the side and rear lot lines shall be at least five (5) feet.~~ An ADU created under this section 5.B may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer ~~and if detached shall not exceed 800 square feet. Living area is defined as the interior habitable area of a dwelling unit including habitable basements and attics, but does not include a garage or any accessory structure.~~

C. Detached ADUs. ADUs not attached to an existing dwelling shall meet all applicable building code requirements, shall not exceed 800 square feet, and

~~5. The second residential unit may either be within the living area of the existing dwelling, attached to the existing dwelling, or detached from the existing dwelling.~~

~~6. A second residential unit shall conform to the applicable standards and requirements of the zoning district in which it is to be located, including height and setback requirements.~~ . An ADU created under this section 5.C may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer. ~~Requirements for building height, setbacks, yards and similar design standards that apply to the single family dwelling unit shall apply to the second residential unit.~~

5. Design Standards. To the extent feasible, an ADU must conform to the design characteristics of the existing single family residence, including but not limited to architectural and landscaping features, building materials, and paint color.

65. Fire Sprinklers. ADUs shall comply with all applicable fire safety provisions of state law, as well as locally adopted building and fire codes. If the existing residence contains fire sprinklers or would be required to contain fire sprinklers if constructed at the time of the ADU application, then sprinkler installation is also required for the ADU.

76. ~~Parking.~~ A minimum of one off-street parking space shall be provided for each ~~ADUsecond residential unit~~ in addition to the offstreet parking spaces required for the existing residence. ~~(s)~~ ADU parking spaces may be provided as tandem parking, including on an existing driveway or in paved setback areas, excluding the non-driveway front yard setback. Parking requirements shall be waived if the ADU is located: (i) within one-half (1/2) mile of a public transit stop; (ii) in a designated historic district; (iii) in part of an existing primary residence or an existing accessory structure pursuant to subsection 5.A above; (iv) in an area requiring on-street parking permits not offered to the ADU occupant; or (v) within one block of a car-sharing pickup/drop-off location.

8. Replacement Parking. When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an ADU, replacement parking shall not be required and may be located in any configuration on the same lot as the ADU.

### **35.320 Accessory Dwelling Units**

1. Purpose. This section is intended to implement the General Plan policies which encourage Accessory Dwelling Units (ADUs) on owner-occupied, single family residential parcels, and is also intended to address the State's ADU provisions as set forth in Government Code Section 65852.1 et seq. ADUs are commonly referred to as second units, in-law-units, and accessory-apartments, and contribute needed housing to the City's housing stock.

2. Administrative Use Permit Required. Except as set forth in this section 35.320, all ADUs are subject to administrative use permit requirements as set forth in Chapter 50 of the Zoning Ordinance. The Planning Director shall issue an administrative use permit to ADUs in compliance with this section 35.320.

3. Definitions.

A. *Accessory Dwelling Unit (ADU)*. An ADU shall consist of complete independent living facilities for one or more persons including permanent provisions for sleeping, living, eating, cooking, and sanitation. Unless an ADU is located within existing residential space or accessory structure, it shall have a separate exterior entrance.

B. *Living Area*. Living area includes the interior habitable area of a dwelling unit including basements and attics, but does not include a garage or any accessory structure.

4. Lot Requirements. ADUs are allowed in single family residential zoning districts where there is exactly one single family residence on the parcel, and in other districts where there is exactly one conforming single family residence on the parcel. A maximum of one ADU is allowed on a lot. No Administrative Use Permit will be issued for an ADU unless and until the City receives the following:

A. Proof of owner occupancy of either the single family residence or of the ADU;

B. A copy of a recorded deed restriction that complies with Government Code section 27281.5 and states that (i) owner occupancy of the single family residence or ADU is required by this Chapter, and (ii) the ADU will not be sold separately from the single family residence; and

C. Any fees required by the City's fee schedule as it exists at the time the ADU application is filed. The City will not consider the ADU to be a new residential use when calculating utility and sewer connection fees and capacity charges, and any such connection fee or capacity charge will be proportionate to the impact of the ADU.

5. Development Standards.

A. *ADUs within existing space*. An ADU within an existing residential space, including the primary structure, attached or detached garage, or other accessory structure existing on January 1, 2017 shall not require an administrative use permit pursuant to this section, and shall instead only be subject to building permit requirements, only if the following requirements are met:

(i) The ADU meets all applicable building and safety codes.

- (ii) The ADU has independent exterior access from the existing residence.
- (iii) The ADU has sufficient side and rear setbacks for fire safety.

An ADU created under this section 5.A may, but is not required to, create new or separate utility connections.

*B. Attached ADUs.* ADUs attached to an existing dwelling shall not exceed fifty percent (50%) of the existing living area, with a maximum increase in floor area of 1200 square feet. Attached ADUs shall meet all applicable building code requirements. For ADUs constructed above an existing garage, the required setback from the side and rear lot lines shall be at least five (5) feet. An ADU created under this section 5.B may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer.

*C. Detached ADUs.* ADUs not attached to an existing dwelling shall meet all applicable building code requirements, shall not exceed 800 square feet, and shall conform to the applicable standards and requirements of the zoning district in which it is located, including height and setback requirements. . An ADU created under this section 5.C may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer.

5. Design Standards. To the extent feasible, an ADU must conform to the design characteristics of the existing single family residence, including but not limited to architectural and landscaping features, building materials, and paint color.

6. Fire Sprinklers. ADUs shall comply with all applicable fire safety provisions of state law, as well as locally adopted building and fire codes. If the existing residence contains fire sprinklers or would be required to contain fire sprinklers if constructed at the time of the ADU application, then sprinkler installation is also required for the ADU.

7. Parking. A minimum of one off-street parking space shall be provided for each ADU in addition to the offstreet parking spaces required for the existing residence. ADU parking spaces may be provided as tandem parking, including on an existing driveway or in paved setback areas, excluding the non-driveway front yard setback. Parking requirements shall be waived if the ADU is located: (i) within one-half (1/2) mile of a public transit stop; (ii) in a designated historic district; (iii) in part of an existing primary residence or an existing accessory structure pursuant to subsection 5.A above; (iv) in an area requiring on-street parking permits not offered to the ADU occupant; or (v) within one block of a car-sharing pickup/drop-off location.

8. Replacement Parking. When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an ADU, replacement parking shall not be required and may be located in any configuration on the same lot as the ADU.