



## REPORT TO THE CITY COUNCIL

**DATE:** Regular Meeting of January 26, 2021

**TO:** Mayor Chris Kelley and Members of the City Council

**SUBMITTED BY:** Robert Reber, Community Development Director  
Christie Crowl, Assistant City Attorney

**SUBJECT:** Continued Public Hearing Regarding Zoning Text Amendment #20-03—  
City Ordinance to update Hercules Municipal Code (Section 13-35.320) to  
address changes in state housing law affecting local regulation of  
Accessory Dwelling Units (“ADUs”)

### **RECOMMENDED ACTION:**

Open the continued public hearing, receive staff report, take public testimony, close the public hearing, and consider waiving the first reading and approving introduction of the draft zone text amendments to the City’s accessory dwelling unit regulations.

### **FISCAL IMPACT OF RECOMMENDATION:**

There are no direct fiscal impacts associated with this item.

### **BACKGROUND:**

The City Council conducted a public hearing at the January 12, 2021 City Council meeting and continued the public hearing to the January 26, 2021 City Council meeting to receive additional information requested by City Council at the January 12, 2021 City Council meeting. To address the Council’s request, City Staff have confirmed with the local Postmaster that U.S. Postal Service will accept separate addresses assigned by the City to detached ADUs.

An accessory dwelling unit (ADU), sometimes called a “second unit” or “in-law unit,” is a self-contained living unit on the same property as a primary residential building. These units must include a living and sleeping area, kitchen, and bathroom. They can be detached from or attached to a primary dwelling. An ADU can also be created by converting a garage or existing space in a home into a separate living unit. Typically, an ADU is used as a rental unit or as a home for an elderly relative, a caregiver, or an older son or daughter living at home.

In April 2018, the City adopted an updated ADU Ordinance to align with prior changes to state law. New state legislation was passed in late 2019 that further streamlines and clarifies the state’s evolving ADU requirements, expands opportunities for new ADUs, and limits the applicability of local zoning controls and requirements for certain ADUs. These recent changes to state law are intended to encourage the development of ADUs to address the statewide housing shortage, and now arguably conflict with and preempt certain aspects of the City’s current ADU requirements.

## DISCUSSION:

At the City Council's August 8, 2020 meeting, City staff provided the Council a summary of the changes to state law, and Council directed staff to accordingly prepare amendments to the City's ADU Ordinance consistent with state law, and to bring a draft of the amended ADU Ordinance back to the Council for consideration before introducing it to the Planning Commission for further review and recommendation. Staff presented the draft ADU Ordinance to the City Council at its October 13 meeting, at which Council's consensus direction to staff was:

- Keep maximum ADU size at the minimum levels required by the State; and
- Require separate utility/sewer connections only when necessary due to technical reasons.

These directions from City Council were reflected in the revised draft Ordinance presented during a public hearing at the Planning Commission's regular meeting on November 2, 2020. The Planning Commission requested that staff further revise the draft accessory dwelling unit (ADU) ordinance to reflect several policy preferences and to more clearly explain some requirements, including:

- Requiring that garage spaces converted to ADUs replace garage doors with walls, windows, and/or doors rated by building code for habitable spaces.
  - *This change was initially recommended by the City Council at its regular meeting on October 27 and confirmed as appropriate by the Rodeo-Hercules Fire District (RFHD) and the City's Building Department following the Commission's November 2 meeting. RFHD further requested that detached ADUs have individual addresses separate from the primary residence. Addresses must be displayed on the ADU building so that they are clearly visible and legible from the street or adjacent alley. If the ADU is located on the property such that it cannot be seen from a street or alley, the property shall post a sign or display some other type of marker in the front yard with the ADU address on it, subject to Fire District approval.*
- Clarifying that **new** detached ADUs cannot be taller than 18 feet or 1 habitable story.
  - Exception: Second-story ADUs are allowed on top of existing, legally-approved detached structures, provided final height does not exceed that of the existing primary residence.
- Eliminating the requirement that access staircases be enclosed.
- Requiring that ADUs constructed on any property designated in the California Register of Historic Resources as a historic contributing or landmark structure shall adhere to the *Hercules Design Guidelines for Historic Preservation*.
- Clarifying that—in addition to the off-street parking spaces required for the existing residence—at least one new on-site parking space shall be provided for an ADU with one or more bedrooms, but that no additional off-street parking is required for a studio ADU (i.e., ADU without a separate bedroom space).

Consistent with the consensus views expressed by the City Council at its October 27 meeting, the Planning Commission on November 2 did not express interest in making the State-mandated requirements for ADUs more lenient (e.g., larger maximum sizes, lesser setbacks, reduced or waived parking requirements, lower fees, etc.). Furthermore, the Planning Commission did not feel it worthwhile to expend the time and effort to develop a list of pre-approved ADU plans, models, vendors, etc., especially given existing architectural diversity throughout the City.

The Commission continued its hearing to its November 16 meeting, at which the Commission considered City staff's recommendation to give clear direction regarding design standards. Except for "statewide exemption ADUs" (which are exempt from such criteria), the City can apply some design standards to ADUs, so long as the standards are objective and the review is strictly ministerial. The City's existing ADU design criteria strive to achieve some degree of aesthetic compatibility between an ADU and the primary residence through four reasonably objective design considerations: architectural features; landscaping features; building materials; and paint color. The Planning Commission recommended retaining three of the four criteria (architectural features, building materials, and paint color) and eliminating one (landscape features). Under the draft Ordinance, ADUs need meet **only one** of the three criteria, thus allowing a greater degree of flexibility in ADU design.

Because of the extent of the proposed changes as compared to the existing Municipal Code section on ADUs, the draft ordinance is presented without tracked changes and recommended to replace the existing Municipal Code section in its entirety. Per state requirements and the Council's and Planning Commission's previous directions, the proposed ADU Ordinance includes the following provisions:

- JADUs: Defined as an ADU that is 500 square feet or less. JADUs must include an efficiency kitchen. The property owner must either reside in the JADU or the remainder of the dwelling. JADUs cannot be subject to any parking requirements, but do require deed restrictions prohibiting short-term rental.
- "Statewide exemption" ADUs: State law describes these units (ADUs/JADUs Within Existing Space, Detached ADUs 800 square feet or less and 16 feet in height or less) as a class of ADUs that are allowed by right, i.e., require only ministerial approval. These types of ADUs are not subject to the minimal design requirements that the City can impose on other ADUs, are not subject to impact fees, and cannot be required to install new or separate utility connections.
- Owner occupancy no longer required (except for Junior ADUs, which are no bigger than 500 sq. ft. and can share a bathroom with the primary residence).
- Impact fees charged only for ADUs 750 sq. ft. or larger and only in proportion to the square footage of the primary dwelling (e.g., at 50% if the ADU is 1,000 square feet and the primary dwelling is 2,000 square feet). ADUs are not considered "new" residential uses when calculating connection and/or capacity fees unless they are constructed with a new single-family dwelling.
- Definition of "ADUs Within Existing Space" clarified and development standards other than setbacks removed.
- New or separate sewer connections can be required for Attached ADUs and Detached ADUs that exceed 500 square feet, but not for JADUs or ADUs Within Existing Space.
- Planning Director must act on a complete ADU application within 60 days (e.g., approval, denial, or written comments describing necessary revisions).
- New maximum size requirements for attached/detached ADUs
  - Attached: 850 square feet if one bedroom, 1,000 if more than one bedroom, cannot exceed 50% of floor area of primary dwelling;

- Detached: 850 square feet if one bedroom, 1,000 square feet if more than one bedroom.
- Setback requirements are now generally at 4 feet instead of 5 feet (except for ADUs Within Existing Space, JADUs, and certain “statewide exemption” ADUs that are generally smaller and within existing space as well).
- Each ADU must provide the lesser of one off-street parking space or one off-street parking space per bedroom. However, the City cannot require any parking or replacement parking for garage/accessory structure conversions, JADUs, ADUs Within Existing Space, and the “statewide exemption” ADUs.
- On single-family lots, one ADU *and* one Junior ADU are both allowed if exterior access is available and side and rear setbacks are sufficient for fire and safety.
- ADUs allowed in all zoning districts that permit multifamily dwellings, which in Hercules, would some commercial and mixed-use districts.
- On multifamily lots, at least one ADU and up to 25% of existing multifamily dwelling units are allowed within a building, and up to 2 detached ADUs subject to compliance with 18-foot height and four-foot setback requirements.
- Existing structures can be converted to or replaced with an ADU, regardless of whether it conforms with setback or building separation standards and without the replacement of off-street parking.
- Utility Connections: The draft ordinance requires most ADUs to pay capacity and connection fees proportionate to the square footage of the primary dwelling, with the caveat that ADUs cannot be considered “new” residential uses for the purposes of calculating these fees unless the ADU is constructed with a new primary dwelling. These fees will provide funding for improvements necessary to address capacity shortages.

## **ENVIRONMENTAL DETERMINATION**

Under Public Resources Code Section 21080.17, the California Environmental Quality Act (CEQA) does not apply to the adoption of the proposed ordinance amendments by a city or county to implement the provisions of Section 65852.1 or 65852.2 of the Government Code (the state ADU law). The draft ordinance would implement Government Code Section 65852.2 within the City of Hercules in a manner that is consistent with the requirements of state law. As such, the adoption of the ordinance is exempt from CEQA.

## **ATTACHMENTS:**

1. Draft Accessory Dwelling Unit Ordinance (Zoning Text Amendment #20-03)