



CITY OF SANTA BARBARA

ORDINANCE COMMITTEE AGENDA REPORT

AGENDA DATE: February 27, 2018

TO: Ordinance Committee

FROM: Planning Division, Community Development Department

SUBJECT: Draft Ordinance Amendments Related To The Regulation Of Accessory Dwelling Units

RECOMMENDATION: That the Ordinance Committee:

- A. Review and consider referring to the full Council amendments to Title 30 of the Santa Barbara Municipal Code (SBMC) to establish development regulations, including but not limited to, exclusion areas, owner occupancy, maximum floor area, setbacks, open yard reductions, parking, and design criteria for Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs); and
- B. Consider an exemption from the requirements of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h), which exempt adoption of ordinances regarding accessory dwelling units.

EXECUTIVE SUMMARY:

Recent state legislation (Assembly Bills 2299 and 494 and Senate Bills 1069 and 22) made significant changes to the manner in which local governments can regulate ADUs, primarily with respect to parking, types and size of ADUs, approval process and timelines, and utility fees. City Council directed staff in April 2017 to develop local regulations for ADUs. Since then, staff has been working with the Planning Commission, Council, and stakeholders to draft development standards that comply with state law, implement applicable General Plan policies, and ensure, to the extent possible under state law, that ADUs are compatible with surrounding development.

DISCUSSION:

The attached draft ordinance (Attachment 1) amending SBMC Title 30 (Inland Zoning Ordinance) related to ADUs and JADUs has been prepared by staff in response to amendments to state law for ADUs and JADUs that were adopted in 2016 and 2017 (Government Code Sections 65852.2 and 65852.22). The stated goal of the amended ADU legislation is to make it easier for single-unit residence owners to add ADUs, by requiring local zoning codes to be more permissive, without dramatically changing the character and stability of existing single-unit neighborhoods.

Background

The City's draft ordinance was first reviewed by the Planning Commission on September 7, 2017. At the hearing, significant public input was received and the Planning Commission requested further analysis and revisions before they could forward a recommendation to City Council. The Planning Commission voted to continue the ADU ordinance discussion indefinitely.

On October 24, 2017, the City Council held a public hearing to receive public comment and provide direction to staff related to the draft ADU regulations and initiate amendments to Titles 28¹ and 30 of the Municipal Code (Attachment 2 City Council Minutes). Council's direction and staff response are provided below for Planning Commission review and discussion:

- **Council Direction:** Expand the zones where ADUs would be allowed to include multi-unit or all zone districts that allow residential units.
 - *Response:* Proposed ordinance allows ADUs and JADUs in any zone that allows residential use (RS, R-2, R-M, RM-H, O-R, O-M, C-R, C-G, and M-C zones).
- **Council Direction:** Send the draft ADU ordinance to the State Department of Housing and Community Development (HCD) for its review and comment.
 - *Response:* The draft ordinance was sent to HCD in November 2017. Minor verbal comments were provided and addressed by staff with changes to the ordinance prior to Planning Commission review. A follow-up letter from HCD was received the day before the Planning Commission hearing. Staff has considered and addressed HCD's comments along with the public comment received at the Planning Commission hearing and the Planning Commission's recommendations on the draft ordinance.
- **Council Direction:** Lower the recommended 5,000 square-foot minimum lot size requirement for ADUs.
 - *Response:* Proposed ordinance allows an ADU or JADU on any lot size.

¹ Subsequent to this hearing, staff determined that amendments to Title 28 (Coastal Zoning Ordinance) were not necessary ahead of the planned submittal of Title 30 to the California Coastal Commission for certification.

- **Council Direction:** Increase the recommended allowable size of ADUs from 600 square feet up to the state law maximum size of 1,200 square feet using a sliding scale of unit size to lot size.
 - *Response:* Proposed ordinance includes a sliding scale for the maximum size of ADUs in accordance with lot size, as shown in a table on page 5 of this report.
- **Council Direction:** Remove the recommended prohibition of ADUs in some high-fire areas using a strategic approach.
 - *Response:* Proposed ordinance allows ADUs and JADUs in the Coastal and Coastal Interior High Fire Hazard Zones and prohibits them in the Foothill and Extreme Foothill Zones.
- **Council Direction:** Require an owner occupancy covenant be recorded for ADUs.
 - *Response:* Proposed ordinance retains the owner occupancy requirement for either the ADU or primary residence (JADU owner occupancy is required by state law) and requires that an agreement containing the owner-occupancy restriction be recorded against the property, as well as a restriction that the ADU or JADU is not rented for a period of less than 30 days. A hardship clause allows property owners to apply for a waiver of the owner-occupation requirement for a period of up to three years.
- **Council Direction:** Revise water meter ordinance to reduce or eliminate the requirement for a separate water meter for ADUs.
 - *Response:* Title 14 of the Municipal Code specifying water meter requirements for new dwelling units (including ADUs) was amended by the City Council in November 2017. Pursuant to the amended Title 14, new City water meters are not required for ADUs; a private sub-meter is required for newly constructed ADUs only.
- **Council Direction:** Allow required ADU parking in the interior setback.
 - *Response:* Proposed ordinance eliminates the parking requirement for ADUs altogether. Replacement parking for the primary residence is allowed in the interior setback.
- **Council Direction:** Allow Junior Accessory Dwelling Units (i.e., JADUs or units created in existing bedrooms) in the draft ordinance.
 - *Response:* JADUs were added to the proposed ordinance.
- **Council Direction:** Keep the 30-day minimum rental requirement.
 - *Response:* The 30-day minimum rental requirement for an ADU is retained in the proposed ordinance.
- **Council Direction:** Keep ADU design guidelines as a ministerial requirement.
 - *Response:* Ministerial design review criteria are included in the ordinance. Prior to this draft, design standards were proposed for inclusion in the Single Family Design Board Design Guidelines, but staff now recommends placing the design review criteria in the ordinance.

Further input on the criteria is being sought from the Single Family Design Board and Historic Landmarks Commission just prior to the Ordinance Committee hearing. Staff will verbally relay comments from the Board and Commission members at the Ordinance Committee hearing.

- **Council Direction:** Allow ADU projects submitted prior to the effective date of the ordinance to continue under compliance with state law.
 - *Response:* A City Council Resolution will specify that applications submitted prior to ordinance adoption will continue to be processed under state law.

At a public hearing on January 25, 2018, the Planning Commission reviewed the revised draft ADU Ordinance. After receiving significant public input, the Commissioners agreed that, overall, they could support the revised ordinance with the following recommended modifications:

Owner Occupancy Requirement

The draft ADU Ordinance requires that either the primary residential unit or ADU be owner-occupied. State law mandates this for JADUs and allows agencies to require this for ADUs. The intent of this requirement is to recognize that many homeowners desire to house extended family or adult children in the ADU, live in the ADU themselves, or rent out the ADU for additional income, allowing owners to live more affordably in the primary unit. Given the limited development standards for ADUs and ministerial review process (i.e., without public notice or hearing), requiring one of the units to be owner-occupied helps protect neighborhood stability and provides additional assurance that the ADU will be located and designed in a manner that is sensitive to existing development on the site and in the neighborhood. Requiring owner-occupancy of at least one unit, even for a limited period of time, also reduces speculative purchases of single-unit residences for the development of exclusively duplex rental units.

The Commissioners were split on retaining the provision that either the primary residence or the ADU be owner-occupied and a covenant be recorded against the property to ensure this requirement for as long as the property contains an ADU. Several ideas to modify this provision were discussed, such as requiring owner occupancy only in the single-unit zone districts, including a sunset clause for the agreement after a certain period of time, and including additional circumstances, besides death or disability, that would qualify an owner for a hardship waiver to occupy the primary residence or ADU. Staff recommends retaining the owner-occupancy provisions for the reasons stated above, with the addition of modifying the hardship waiver to include job transfer or similar significant personal circumstance to allow time for a property owner or estate representative to apply for a temporary waiver from the owner-occupancy provision.

High Fire Hazard Areas

State Government Code Section 65852.2(a)(1)(A) states that cities may “designate areas within the jurisdiction of a local agency where accessory dwelling units may be permitted.

The designation of areas may be based on criteria that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.”

Staff recommends retaining the prohibition of ADUs and JADUs in the Foothill and Extreme Foothill High Fire Hazard Areas. This recommendation is based on General Plan Policies (Housing Element Policy 15 and Land Use Element Policy/Implementation Action 6.5) and the Certified Final Program Environmental Impact Report for the General Plan Update, which relied on the aforementioned General Plan policies to address the potential for limited additional growth and populations in High Fire Hazard Areas and conclude a less than significant impact for exposure of new development and residents to wildland fires. Staff recognizes that the ordinance could be amended in the future to allow ADUs in these areas if they do not adversely impact on-street parking supply or exacerbate existing fire hazard conditions. To date, 100 ADUs have been proposed (40 of which have been permitted or are ready to have permits issued) in one of the four High Fire Hazard areas of the City, as allowed under state law. Staff recommends further evaluation of those ADUs, once constructed and occupied, prior to City Council considering allowing ADUs and JADUs in the Foothill and Extreme Foothill High Fire Hazard Areas.

A majority of the Commissioners were in favor of revising the draft ordinance to allow ADUs and JADUs in the Foothill and Extreme Foothill High Fire Hazard Areas subject to additional safety-related provisions such as requiring one parking space for an ADU when it does not meet one of the five exceptions provided in Government Code Section 65852.2(d) (Attachment 3 – Government Code Sections). The Commission also recommended prohibiting tandem parking in the Foothill and Extreme Foothill High Fire Hazard Areas to ensure a clear path for vehicles exiting the property in case of an emergency. These measures, however, do not fully address the risk findings detailed in the City’s 2004 Wildland Fire Plan, such as risk of structure loss due to high density of homes, steep slopes, and existing non-conforming roads, bridges, and driveways.

ADU Maximum Floor Area

Maximum ADU Size

The proposed sliding scale for the maximum floor area of ADUs based on lot size was discussed with the Planning Commission. The purpose of this graduated approach is to allow ADUs that are proportional and appropriate to the lot size to ensure that they would not impact neighborhood character and would likely be subordinate to the primary residential unit. A majority of the Commissioners and a number of the public speakers believed the proposed maximum ADU sizes were too restrictive to provide adequate-size housing for couples and families living in the ADU unit and were in favor of increasing the maximum ADU size limits as follows:

Lot Area	Maximum ADU Size in Proposed Ordinance	Maximum ADU Size Proposed by Planning Commission
Less than 5,000 s.f.	600 s.f.	600 s.f.
5,000–9,000 s.f.	700 s.f.	800 s.f.
10,000–14,999 s.f.	800 s.f.	1,000 s.f.
15,000–19,999 s.f.	800 s.f.	1,200 s.f.
20,000–1 acre	1,000 s.f.	1,200 s.f.
1 acre or larger	1,200 s.f.	1,200 s.f.

Open Yard Requirement

The Planning Commission recommended that ADUs be allowed to encroach into the required open yard for single-unit and two-unit residences (Santa Barbara Municipal Code Section 30.140.140.C). The Commissioners also asked staff to look into options for allowing flexibility in the open yard requirements. The purpose of an open yard, as described in SBMC Title 30 (Inland Zoning Ordinance), is “to promote desirable living conditions, a sense of openness on residential development, and to provide minimum useful space for outdoor living and enjoyment.”

The current open yard requirements for lots developed with single-unit and two-unit residential uses are summarized below.

Lots Developed with Single-Unit and Two-Unit Residential:

1. *Minimum Open Yard Area:*
 - a. *800 square feet on lots less than 5,000 square feet*
 - b. *1,250 square feet on lots 5,000 square feet or greater*
2. *Minimum Open Yard Dimensions: 20 feet long and 20 feet wide*
3. *Open Yard Location: May be located in one or multiple areas that meet the minimum dimensions. May include setbacks, except for the primary front setback or the first 10’ of any secondary front setback.*

Staff explored several options for providing flexible open yard requirements to facilitate ADU development, as recommended by the Planning Commission. If the Ordinance Committee concurs with this approach, staff recommends allowing ADUs to encroach a maximum of 20% into the conforming or nonconforming open yard area, or 150 square feet, whichever is greater.

A 20% encroachment (20% of 1,250 equals 250 square feet) is consistent with existing allowances in the Zoning Ordinance (SBMC Section 30.140.090.E.) for open yard encroachments for “outdoor amenities” such as gazebos, covered decks, etc. Allowing an encroachment based on a percentage of open yard area up to a maximum fixed amount will provide flexibility to allow ADUs on lots with a nonconforming open yard while

providing some area to meet the purpose of the development standard. Although the majority of ADU applications (78%) are conversions of existing structures and not impacted by open yard requirements, there are some examples where a reasonable reduction is an appropriate improvement. For example, in order to construct an ADU above an existing garage, a new second-story staircase is needed, which may reduce the open yard area on a site. Alternatively, if a small one-car garage is proposed to be converted to an ADU, this flexibility would allow the garage to be expanded to create a more livable unit. (Attachment 4 - Open Yard Examples A and B.)

Other options for reducing the open yard requirement for ADUs include reducing the minimum total area from 1,250 square feet to 800 square feet, or reducing the minimum dimensions from 20 feet to 10 or 15 feet. Staff also considered applying the multi-unit and mixed-use open yard requirement instead of the single-unit and two-unit open yard requirement. Although these options would accommodate the inclusion of ADUs on smaller lots, it would not assist ADU development on sites that could not meet even a reduced open yard requirement. Reduced development standards for ADUs also carry some risk, as they could result in more complicated regulations, or new nonconforming development if the ADU were discontinued. Significantly different open yard requirements for lots developed with ADUs could also result in an inconsistent pattern of development in the neighborhood.

Floor-to-Lot Area Ratio and Total Maximum Accessory Buildings

The Planning Commission did not recommend changes to the draft ordinance with respect to the application of floor-to-lot area ratio (FAR) limitations to ADUs or total maximum square footage allowed for accessory buildings per lot. Thus, staff recommends retaining the provision that FARs include the ADU square footage for those lots subject to FAR limitations. The square-footage limit for accessory buildings, including ADUs, does require revision based on the Planning Commission’s recommendation to increase the sliding scale for the maximum floor area of ADUs. The rationale for these amounts is based on the size of a typical two- or three-car garage (400–750 s.f.) plus the maximum allowed for a detached ADU. Accordingly, the draft ordinance was amended to reflect the following:

Lot Size	Maximum ADU Size	Total Maximum Accessory Building per Lot
<i>Less than 5,000</i>	600 s.f.	1,000 s.f.
<i>5,000-9,999</i>	800 s.f.	1,300 s.f.
<i>10,000-14,999</i>	1,000 s.f.	1,500 s.f.
<i>15,000-19,999</i>	1,200 s.f.	1,750 s.f.
<i>20,000 or larger</i>	1,200 s.f.	1,950 s.f.

Applications in Progress

The Planning Commission recommended that all ADU applications submitted prior to the effective date of this ordinance be processed in accordance with state law. Staff recommends that *complete* applications be allowed to proceed under state law (a complete application means that all the required information necessary for project analysis and decision has been provided). If the application is missing a key element such as a site plan or floor plan, it is rejected due to staff's inability to review all aspects of the project. Removal of the requirement for a complete application may lead to an excess of incomplete applications submitted to the building department and delayed project review overall.

Environmental Review

Under California Public Resources Code (CPRC) Section 21080.17, the California Environmental Quality Act (CEQA) does not apply to the adoption of an ordinance by a city or county implementing the provisions of Section 65852.2 of the Government Code, which is the State Accessory Dwelling Unit Law. Therefore, the draft ADU Ordinance is statutorily exempt from CEQA in that the draft ADU Ordinance implements the state accessory dwelling unit law.

Next Steps

Following Ordinance Committee review of the draft ADU Ordinance and associated recommendation to City Council, the final ADU Ordinance will be presented to City Council for introduction and adoption. The City is required to submit the adopted ordinance to the State Department of Housing and Community Development within six weeks of City Council adoption.

- ATTACHMENTS:**
1. Proposed Amendments to SBMC Title 30 Related to ADUs
 2. City Council Meeting Minutes, October 24, 2017
 3. Government Code Sections 65852.2 and 65852.22
 4. Open Yard Examples A and B

PREPARED BY: Rosie Dyste, Project Planner

SUBMITTED BY: George Buell, Community Development Director

APPROVED BY: City Administrator's Office