



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: December 17, 2019

TO: Mayor and Councilmembers

FROM: Planning Division, Community Development Department

SUBJECT: Interim Urgency Ordinance Extending Application Of The City's Existing Accessory Dwelling Unit Ordinance Beyond January 1, 2020

RECOMMENDATION:

That the Council of the City of Santa Barbara adopt by reading in full, and by a four-fifths vote, an Interim Urgency Ordinance of the Council of the City of Santa Barbara Temporarily Extending Application of the City's Existing Accessory Dwelling Unit ("ADU") Ordinance Beyond January 1, 2020.

EXECUTIVE SUMMARY:

In order to immediately preserve and protect public peace, health, safety, and welfare from the impacts of a lack of local regulations related to ADU and Junior Accessory Dwelling Unit ("JADU") construction if the City's existing ADU Ordinance is not extended beyond January 1, 2020, Staff is recommending that the City Council adopt the proposed interim urgency ordinance ("Interim Ordinance"). The Interim Ordinance will temporarily extend application of the City's existing ADU Ordinance beyond January 1, 2020, for at least 45 days from its adoption, or a period not to exceed 22 months and 15 days, if the Interim Ordinance is subsequently extended by the City Council by no later than January 31, 2020. Adoption of the Interim Ordinance will be immediate and will give Staff, City Council, and the Planning Commission the opportunity to conduct a detailed study and analysis to propose amendments to its existing ADU Ordinance in order to comply with recently enacted State laws.

Moreover, Staff believe ADU development should be specifically restricted within the Foothill Zone, as it is currently restricted in the Extreme Foothill Zone, to allow for a thorough evaluation of potential increased resident evacuation demands at least until additional data has been received by the Fire Department updating the Community Wildfire Protection Plan which is anticipated to occur in the February 2020 timeframe. The proposed Interim Ordinance would also restrict ADUs that are currently allowed in the Foothill Zone.

DISCUSSION:

Background

As part of its response to California's housing crisis, the Legislature recently passed amendments to the State housing laws that further limit local regulation of ADUs and JADUs. The Legislature's goal is to accelerate ADU/JADU development throughout the State. Historically, an ADU is usually a second small residence on the same grounds as a single-family home, such as a back house or an apartment over a garage. A JADU is a separately rented area within an existing home.

This fall, the Legislature passed AB 881, which takes effect on January 1, 2020. AB 881 significantly impacts the City's local regulation of ADUs and JADUs, which currently exists through its ADU Ordinance, adopted by City Council in 2018. Among other things, AB 881 allows for the construction of multiple ADUs in multi-unit developments, lowers setback requirements, prohibits replacement parking requirements, streamlines the ADU application process by reducing the review period from 120 days to 60 days, allows for both ADUs and JADUs to exist on the same residential single-unit lot, and exempts owner-occupancy requirements until January 1, 2025.

Most significantly, AB 881 declares that any local ADU ordinance, such as the City's existing ADU Ordinance, that does not comply with current State law is declared "null and void" in its entirety once AB 881 takes effect on January 1, 2020. If this takes place, this "one size fits all" State law, as amended by AB 881, will govern the City's ADU/JADU development unless and until the City enacts a new replacement local ordinance that fully complies with these new amendments.

Santa Barbara Municipal Code (SBMC) Section 30.185.040, Accessory Dwelling Units, is applicable to inland portions of the City. Because SBMC Title 30 has not been certified by the California Coastal Commission, and not applicable in the Coastal Zone, staff has been reviewing and permitting ADUs and JADUs in the Coastal Zone pursuant to Government Code Sections 65852.2 and 65852.22. This Interim Ordinance would not affect SBMC Title 28 (Coastal Zoning Ordinance) and, therefore, the standard for review for ADU and JADU applications in the Coastal Zone would continue to be the state law, including the recent amendments.

Impact to the City

Allowing ADU and JADU permitting, planning, and construction to take place beginning on January 1, 2020, without the City's existing ADU Ordinance still in effect, could result in significant adverse impacts to surrounding residential development and unacceptable risks to the health, safety, and welfare of the City's residents and the general public. These impacts would be immediate and would include:

1. Overcrowding beyond the designed capacity of residential areas with an increased and unplanned for burden on public utilities and facilities, an increase in traffic congestion, particularly on steep and narrow foothill streets, new on-street parking demands resulting in reduced travel ways in some areas, and a decrease in the availability of adequate parking spaces resulting in a reduction in the quality of life within the City's neighborhoods (Attachment 1 – Memo from Public Works Department);
2. Increasing the likelihood of substantial adverse changes in, or the destruction of, significant historic resources designated as a City Landmark, Structure of Merit, or an historic resource located in a designated historic district; and
3. Threatening the public peace, health, safety and welfare if ADU/JADU construction is allowed in High Fire Hazard Areas as defined in the City's Wildland Fire Plan (Attachment 2 – Memo from Fire Marshal; Attachment 3 - . Map of Accessory Dwelling Unit Projects as of November 26, 2019);

Therefore, it is urgent that the City have the opportunity to conduct further analysis and develop regulations to amend its existing ADU ordinance in light of the State's recently-enacted amendments by extending its application beyond the January 1, 2020 deadline in order to prevent these potential adverse impacts from occurring.

Moreover, given the time required to undertake the necessary study and analysis, it is crucial that this Interim Ordinance be immediately enacted to ensure that the City can continue applying its existing ADU Ordinance for any future ADU/JADU permitting, planning, and construction during the urgency period. After the City has had sufficient time to fully assess and evaluate the impacts these new State law amendments will have upon the City, Staff can then propose amendments to the existing ADU Ordinance in compliance with State law while taking into consideration the social, environmental, and economic values that are unique to the City.

The proposed interim urgency ordinance is authorized by both Charter Section 511 and Government Code Section 65858.

Protection of Historic Resources

The City's current ADU ordinance does not allow an ADU or JADU to be permitted if it would cause a substantial adverse change in the significance of a historical resource listed on the National Register of Historic Places or California Register of Historic Places, or designated as a City of Santa Barbara Landmark or Structure of Merit, or located in a designated historic district. The Community Development Director makes this determination by reviewing the proposal for compliance with appropriate Secretary of Interior's *Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings*. The City's ADU ordinance also contains objective architectural review standards that ensure ADUs

located in front yards are sensitively located and screened from public view and that ADUs on a site with an historical resource are compatible with the design, materials, and colors of the primary residential unit on the lot.

The recent state legislation does not address impacts to historic resources in any way. Since ADUs are approved ministerially and thus, not subject to the California Environmental Quality Act or City General Plan policies or design guidelines, ADUs could be developed on lots with designated historic resources with no review of their potential impact to the otherwise protected resource. This is cause for significant concern and will immediately increase the likelihood of substantial impacts to the City's 532 designated historic resources. The recent State legislation allows agencies to adopt a local ADU ordinance that prevents adverse impacts to historic resources. Thus, it is critical that the City's existing ADU ordinance, and its provisions to protect historic resources, remain effective until it can be amended to comply with State law.

Urgency Measure

Pursuant to Section 65858 of the California Government Code and City Charter Section 511, the City may adopt an interim urgency ordinance to protect the public peace, health, safety, and welfare by prohibiting any uses that may be in conflict with a contemplated General Plan, specific plan, or zoning proposal, as an urgency measure. An urgency measure must be passed by City Council by four-fifths vote (*i.e.*, 6 of 7). The statute has not been interpreted as to whether the vote requirement is four-fifths of the total City Council membership or four-fifths of those present and voting. Accordingly, the City Attorney advises that the safest course of action is to obtain unanimous approval in the event all City Council members are not present and voting.

The proposed Interim Ordinance must also contain findings that the construction of ADUs or JADUs under State law could result in a threat to public peace, health, safety, or welfare (see, "Findings" in the referenced Interim Ordinance at Section 1, paragraph C, subparagraphs 1-3).

The Interim Ordinance would become effective immediately in inland areas of the City upon adoption and would continue in effect for 45 days unless subsequently extended by the City Council. After notice and public hearing, the Council may, by four-fifths vote, subsequently extend the proposed Interim Ordinance for up to an additional 22 months and 15 days. However long the urgency period is extended, no later than ten days before its expiration, the State statute requires that a written report ("Report") be prepared and presented to the City Council describing those measures taken to alleviate the conditions which led to the adoption of this Interim Ordinance. This Report to the City Council will be prepared by the City Administrator.

General Plan Consistency

The City's General Plan was implemented with regard to land use policy to serve the public health, safety, comfort, convenience and general welfare and to provide the economic and social advantages resulting from an orderly planned use of land resources, and to encourage, guide and provide a definite plan for the future growth and development of said City. The General Plan reflects the City's overriding interest in planning and regulating development of residential properties within the City which includes an interest in focusing growth in certain areas, and maintaining and improving the quality of urban life and the character of the City's neighborhoods. The proposed Interim Ordinance temporarily extending application of the City's existing ADU Ordinance, codified as Santa Barbara Municipal Code Section 30.185.040, beyond January 1, 2020 would affect all inland zones that allow residential uses within the City's jurisdiction.

Thus, the proposed Interim Ordinance conforms to the goals, objectives, and policies of the General Plan as the leading statement in the "General Plan Purpose and Need" declares, "The health, safety and welfare of the community are of primary importance in the City."

Subsequent Consideration of Amendments to the City's existing ADU Ordinance

If City Council adopts the Interim Ordinance temporarily extending application of the City's existing ADU Ordinance beyond January 1, 2020, it will concurrently direct the City Administrator, acting by and through such City departments as he may deem appropriate (e.g., Community Development, Finance, Parks and Recreation, Fire, Police), to study the ramifications of construction of ADUs (and JADUs) in light of recently-enacted State laws and report the findings for consideration by the Planning Commission and City Council.

This will provide Staff reasonable time to prepare a detailed study and analysis of the impact of new ADU and JADU construction on the planning and development of residential properties within the City and to develop regulations and propose amendments to the City's existing ADU Ordinance that are in compliance with recently-enacted State law.

ENVIRONMENTAL REVIEW:

Under California Public Resources Code 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 Government Code Sections 65852.2 and 65852.22, which is the State ADU law. The City Council's action to adopt the City's existing ADU ordinance was statutorily exempt from CEQA and thus, the temporary extension of the same ordinance is also statutorily exempt.

BUDGET/FINANCIAL INFORMATION:

There may be potential Staff costs that would need to be budgeted associated with the necessary analysis, study, and planning for developing amendments to the City's existing ADU Ordinance in order to comply with State law.

- ATTACHMENTS:**
1. Memo from Public Works Department, dated December 6, 2019
 2. Memo from Joe Poire, Fire Marshall, dated December 5, 2019
 3. Map of Accessory Dwelling Unit Projects as of November 26, 2019

PREPARED BY: Ariel Calonne, City Attorney

SUBMITTED BY: George Buell, Community Development Director

APPROVED BY: City Administrator's Office