



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** April 17, 2018

**TO:** Mayor and Councilmembers

**FROM:** Planning Division, Community Development Department

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

**RECOMMENDATION:** That Council:

- A. Make the California Environmental Quality Act findings contained in this Council Agenda Report;
- B. Introduce and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Amending Title 30 of the Santa Barbara Municipal Code Chapter 30.20 Regarding Accessory Dwelling Units in Residential Zones, Chapter 30.25 Regarding Accessory Dwelling Units in Commercial and Office Zones, Chapter 30.30 Regarding Accessory Dwelling Units in the Manufacturing Zones, Chapter 30.35 Regarding Accessory Dwelling Units in the Coastal-Oriented Zones, Section 30.140.020 Regarding Accessory Building Types, Front Yard Limitation, and Maximum Floor Area, Section 30.140.150 Regarding Required Features for Residential Units, and Amending Chapter 30.185 Establishing Development Regulations for Accessory Dwelling Units; and
- C. Adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Approving the Accessory Dwelling Unit Covenants as to form.

### **EXECUTIVE SUMMARY:**

Recent state legislation (Assembly Bills 2299 and 494 and Senate Bills 1069 and 22) made significant changes to California Government Code Sections 65852.2 and 65852.22 (Attachment 1, "State Law"), which govern the manner in which local governments can regulate Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs), 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 that time, staff has been working with the Planning Commission, Single Family Design Board, Historic Landmarks Commission,

Ordinance Committee, Council, and public stakeholders to draft amendments to Santa Barbara Municipal Code (SBMC) Title 30 for ADUs and JADUs that comply with state law, implement applicable General Plan policies, and ensure, to the extent possible, that ADUs are compatible with surrounding development.

## **DISCUSSION:**

### **I. Background**

The attached amendments to SBMC Title 30 related to ADUs<sup>1</sup> and JADUs<sup>2</sup> has been prepared by staff in response to amendments to state law for ADUs and JADUs that were adopted in 2016 and 2017. The intent of the state law is to make it easier for single-unit residence owners to add ADUs, which are a critical form of infill development that can be affordable and serve a variety of populations within existing neighborhoods.

In July 2017, the first public meetings on the draft ADU ordinance amendments were held with the Single Family Design Board (SFDB) and Historic Landmarks Commission (HLC). Portions of the initial draft ADU Ordinance and administrative design review standards were presented as a discussion item to receive input from these design review bodies. At the time, staff proposed including the administrative design review standards in the SFDB General Design Guidelines, rather than incorporating them into the draft ADU ordinance. That same summer, staff initiated public outreach meetings with members from the Allied Neighborhood Association and American Institute of Architects (AIA), and developed an email notification mailing list for periodic email bulletins of upcoming hearings on the draft ADU ordinance.

The City's first draft ADU ordinance was 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 first draft ADU ordinance and initiate amendments to Titles 28<sup>3</sup> and 30 of the Municipal Code. Council discussed and provided general direction on certain aspects of the draft ADU ordinance, including:

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<sup>1</sup> An ADU is an attached or detached dwelling unit that provides complete independent living facilities for one or more persons. An ADU shall include permanent provisions for living, sleeping, eating, cooking, and sanitation.

<sup>2</sup> A JADU is a junior accessory dwelling unit that is no more than 500 square feet in size and is a converted bedroom contained entirely within an existing single-family structure. A JADU may include separate sanitation facilities or share sanitation facilities with the existing structure.

<sup>3</sup> Subsequent to this hearing, staff determined that amendments to Title 28 (Coastal Zoning Ordinance) were not necessary in advance of the planned submittal of Title 30 to the California Coastal Commission for certification.

- Allowed zone districts;
- Early review of the draft ADU ordinance by the California Department of Housing and Community Development (HCD);
- Minimum lot size;
- Maximum unit size;
- High Fire Hazard Areas (HFHAs) prohibition;
- Owner occupancy and recordation of a covenant;
- Individual water meter requirements;
- Parking locations;
- Provision for JADUs;
- Minimum 30-day rental requirement;
- Administrative design review standards; and
- Effective date of the ordinance and projects currently in the review process.

City Council voted to initiate an amendment to Title 30 establishing regulations for ADUs and also directed staff to return and introduce an ordinance amendment related to ADU water meter requirements in Title 14, Water and Sewer Ordinance, ahead of the amendments to Title 30. The Title 14 amendments were adopted on December 5, 2017.

In November 2017, staff began meeting with members of the AIA to seek input on administrative design review standards (criteria) for ADUs. Several meetings were held between November 2017 and February 2018, although most of the discussion focused on aspects of the draft ADU ordinance rather than the design criteria. Staff also sent the administrative draft ADU Ordinance to HCD for early review in November 2017.

On January 25, 2018, the Planning Commission held a public hearing to review a revised draft ADU Ordinance incorporating general direction from City Council and other comments received to date. After receiving significant public input, the Planning Commission discussed and provided direction on certain issues (Attachment 2, Planning Commission Minutes) in the revised draft ADU ordinance, including:

- *Owner Occupancy with Recordation of a Covenant*: Commissioners discussed several options, such as removing the requirement, limiting it to certain zone districts, eliminating the requirement to reconfigure the ADU if the property is no longer developed and used as a primary dwelling unit and ADU, and/or softening the hardship waiver, but were unable to pass a motion on this topic;
- *High Fire Hazard Areas (HFHAs)*: Commissioners passed a motion to recommend removal of the prohibition of ADUs in the Foothill and Extreme Foothill HFHAs<sup>4</sup>, subject to Fire Department review of all ADU applications in the HFHAs and additional parking required for ADUs;

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<sup>4</sup> Based on City Council's direction in October 2017 to take a measured, strategic approach to the HFHA prohibition, staff had drafted the ADU ordinance to remove the prohibition in the Coastal and Coastal Interior HFHAs, which have lower fire-safety risk factors than the Foothill and Extreme Foothill areas.

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- *Effect of the New Ordinance on Applications in the Process:* Commissioners passed a motion to recommend allowing ADU projects submitted prior to the effective date of this ordinance to be processed in accordance with state law;
- *ADU Unit Size:* Commissioners passed a motion to recommend use of the AIA's proposed increase in the maximum size of ADUs using a sliding scale based on lot size; and
- *Requirements for Open Yard, Floor to Lot Area Ratio (FAR), and Total Square Footage of Accessory Buildings on a Lot:* Commissioners recommended that staff explore options to allow reductions to the open yard requirement for ADUs.

Following the Planning Commission hearing, staff returned to the SFDB and HLC in February 2018 for input on the draft design criteria for administrative approval of ADUs, included as part of the Title 30 amendments. At the meeting, SFDB members sought clarification on several aspects of reviewing ADUs in general, recommended that the City hire a qualified design architect to conduct administrative reviews of proposed ADUs on a project-by-project basis, noted that the SFDB does not have the tools it would like to address public concerns about ADUs, and stated that the ADU ordinance may not be ready to move forward to the Ordinance Committee (Attachment 3, SFDB Minutes).

HLC members commented that new detached or attached ADUs should be "compatible" with, rather than "match" the design style of the primary residence and this criteria should be applied to all units. HLC members also recommended that a statement requiring sensitivity to historic structures be included in the ordinance, provisions be added to soften the look of an ADU from the streetscape, and the "Santa Barbara Colors" guide be made available during the approval process. Moreover, HLC determined that solar access, street safety, privacy, and quality of life were important considerations. The HLC members were also concerned about water conservation, retaining a prohibition of ADUs in the HFHAs, building in flood hazard zones, and ensuring ADU applications incorporate a site plan, floor plan, and elevations to demonstrate compliance with the ordinance (Attachment 4, HLC Minutes).

On February 27, 2018, the Ordinance Committee held the first public meeting, which was continued to March 6, 2018, to review and consider referring to the full Council amendments to Title 30 to establish development regulations for ADUs and JADUs (Attachment 5, Ordinance Committee Minutes). After public comment, the Committee made a motion to recommend the Title 30 amendments with the following direction to staff:

- Allow ADUs in the Foothill and Extreme Foothill HFHA, subject to a ministerial checklist developed by Planning Division and Fire Department staff to ensure that ADUs are only allowed in safe areas within the HFHAs; also allow JADUs in all HFHAs, not subject to the ministerial checklist;
- Require owner occupancy of either the primary residential unit or the ADU with a recorded covenant only in the Residential Single Unit (RS) zones and consider a to-be-determined sunset clause for the owner occupancy requirement; and

- Retain the open yard reduction provision as presented in the draft ordinance (Ordinance Committee Draft 02/15/18) and in accordance with the Planning Commission's recommendation on this subject.

## **II. Proposed Ordinance Amendments Related to Accessory Dwelling Units**

Following the Ordinance Committee meetings, the draft ADU ordinance was amended in accordance with the Ordinance Committee's motions of March 6, 2018, and to incorporate some of the SFDB's and HLC's recommendations as well as editorial changes recommended by staff for clarity. The narrative below explains the amendments based on Ordinance Committee recommendations, then describes other amendments to the administrative design criteria and clarifying editorial changes.

### Ordinance Committee Recommendations

#### *High Fire Hazard Area (HFHA) Requirements*

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."

As directed by the Ordinance Committee, Fire Department and Planning Division staff met to discuss options to develop a ministerial checklist to safely allow ADUs in the Foothill and Extreme Foothill HFHAs. A review of other jurisdictions' ADU ordinance provisions for public safety was included in the March 6, 2018, discussion along with the following public remarks:

- Does property have adequate access?
- Is there more than one route for ingress/egress?
- Does a fire hydrant exist on or near the property within a certain distance?
- Is the ADU equipped with fire sprinklers?
- Is the ADU in an area of low density or is it the required distance from the property boundary?
- Is parking provided on site for the main residence and ADU?

The checklist ideas listed above were carefully considered by staff; however, the concept of limiting or prohibiting ADUs based on adequate access, density, or evacuation capacity cannot be implemented at the ministerial level using existing, limited data. Furthermore, per state law, fire sprinklers cannot be required for the ADU if they are not required for the primary unit, and parking cannot be mandated due to the five parking exceptions for ADUs (Government Code Section 65852.2(d)). Finally, the City already implements fire hydrant location requirements for all development and, other than the standard required

setbacks for structures, the City has not adopted a minimum setback distance from a property boundary for fire safety.

The Fire Department and Planning Division staff researched the concept of requiring a lot with a proposed ADU to adjoin a street that meets or exceeds a minimum road width dimension for safe ingress and egress. Generally, a minimum 20-foot-wide, clear (i.e., with no vehicle parking) travel area is required for a two-lane road. If, for example, on-street parking occurs on both sides of the road right-of-way, then the full paved road width would need to be at least 36 feet to maintain two 10-foot-wide travel lanes and 8 feet for parking on each side of the road. In considering this option, staff found that the roadway width adjoining a lot tends to vary significantly, particularly on curved streets, making this standard difficult to implement at the individual parcel level as a ministerial checklist item. Finally, there is a lack of consistent data on roadway width and on-street parking in order to determine how this standard would impact the number of proposed ADUs in any given location.

Based on this discussion and Ordinance Committee recommendations, the proposed ADU Ordinance Section V. Additional Requirements in the Foothill and Extreme Foothill High Fire Hazard Areas, allows ADUs in the Foothill and Extreme Foothill HFHAs if they meet the following criteria:

1. No parking space on the lot shall be developed in a tandem configuration, to ensure two or more vehicles can exit the property on short notice, if necessary.
2. The ADU shall be designed to meet high-fire construction standards adopted or enforced by the City, as determined by the Chief Building Official or the Fire Code Official<sup>5</sup>.
3. No variance or modification to any Fire Code requirements or high-fire construction standards shall be permitted<sup>6</sup>.
4. The site must meet defensible space requirements, pursuant to SBMC Chapter 8.04, prior to occupancy, and those requirements must be maintained<sup>7</sup>.
5. One covered or uncovered automobile parking space shall be provided per unit or bedroom, whichever is less, meeting all of the same parking standards required for the Primary Residential Unit as described in subsection 30.180.040.S.1, Parking, except in any of the following instances<sup>8</sup>:
  - a. The ADU is located within a walking distance of one-half mile of a public transit stop, such as a bus stop or train station.
  - b. The ADU is located within an architecturally and historically significant historic district. For purposes of this provision, El Pueblo Viejo Landmark District, Brinkerhoff Avenue Landmark District, Riviera Campus Historic District, and the El Encanto Hotel Historic District, constitute

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<sup>5</sup> Already required in HFHAs, but included as reinforcement.

<sup>6</sup> This is a new requirement.

<sup>7</sup> Already required in HFHAs, but included as reinforcement.

<sup>8</sup> This is a higher standard than required for ADUs outside of these HFHAs but, per state law, the parking exceptions listed must be offered.

architecturally and historically significant historic districts within the City and any district hereafter created deemed to be architecturally and historically significant.

- c. The ADU is contained entirely within the permitted floor area of the existing primary residential unit or an existing accessory building.
- d. When on-street parking permits are required but not offered to the occupant(s) of the ADU.
- e. When there is a “carshare vehicle” as defined in Chapter 10.73 of the Code, located within a walking distance of 500 feet of the ADU.

As directed by the Ordinance Committee, JADUs would be allowed in HFHAs, without compliance with the above criteria<sup>9</sup>.

If the above criteria do not adequately address City Council’s concerns about allowing ADUs in HFHAs, Council could consider limiting ADUs in HFHAs to only those created through conversion of existing space within a primary residential unit or conversion of a garage or other accessory structure on the site. This would limit new structural development in the Foothill and Extreme Foothill HFHAs and likely reduce the additional density in those areas. In that case, item 5 above would be deleted, because state law dictates that the City cannot require parking for ADUs created within existing structures.

#### *Owner Occupancy Requirement*

The proposed ADU ordinance Section G. Owner Occupancy 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 for at least an initial period of time 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 and also reduces speculative purchases of single-unit residences for the development of exclusively duplex rental units.

As recommended by the Ordinance Committee, the ADU Ordinance was amended to require owner occupancy for ADUs in the Residential Single Unit (RS) zone only, for a period of not less than 10 years from the date that the final Certificate of Occupancy for the ADU is issued. The owner-occupant may request a waiver of residing on the property in the event of a hardship (e.g., temporary job relocation, military service, extended travel). Any such waiver is required to specify the period of time for which it is granted, provided that the waiver does not exceed three years.

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<sup>9</sup>JADUs are considered a remodel and typically do not trigger Fire Code or defensible space requirements.

As stated in Section Y. Recorded Agreement, the ADU and JADU requirements regarding ownership, occupancy, and rental terms are contingent upon a recorded agreement (i.e., covenant), which enables enforcement of the terms. Three versions of such a covenant are attached to the Council Resolution Approving the Covenants as to form. The first example applies to ADUs in the RS zone, which requires at least 10 years of owner occupancy. Due to distinct owner occupancy requirements, there is a second covenant for JADUs, and a third covenant for ADUs in zones other than RS (no owner occupancy requirement). All three covenants specify that the unit is not to be sold separately and is subject to rental terms of not less than 31 consecutive days.

Since January 2017, the City has required a deed restriction on all ADU applications that specifies that: the ADU shall not be sold separately from the Primary Dwelling Unit; the ADU rental terms shall not be less than 31 consecutive days; and the Owner shall reside in and maintain one of the units as the Owner's principal place of residence. If directed by Council, pending applications for ADUs received on or after January 1, 2017, and before the effective date of the proposed amendments to SBMC §30.185.040, will continue to be processed in accordance with California Government Code Section 65852.2, but may utilize one of the new covenants attached as exhibits to the Council Resolution. If a property owner has already executed the prior form, he or she may request that City staff record a new covenant with the updated terms, which will supersede the covenant previously recorded in its entirety.

#### *Open Yard Requirement*

The Planning Commission and Ordinance Committee recommended that ADUs be allowed to encroach into the required open yard for single-unit and two-unit residences (SBMC Section 30.140.140.C). The purpose of an open yard, as described in SBMC Title 30, 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:

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 feet of any secondary front setback.

Staff explored several options for providing flexible open yard requirements to facilitate ADU development, including a suggestion by the AIA to reduce the required open yard to 10 percent of the lot area for all ADU projects. Staff does not recommend 10 percent of the lot area as an open yard for ADUs, because it is not consistent with the zoning



ordinance for all other residential development in the City, will result in nonconformity if the ADU is discontinued, and does not adequately address sites already developed with a nonconforming open yard.

The proposed ADU ordinance Section O. Open Yard allows ADUs to encroach a maximum of 20 percent into the conforming or nonconforming open yard area, or 150 square feet, whichever is greater. A 20 percent encroachment (20 percent 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.

#### Other Ordinance Amendments

A few clarifying, organizational, and formatting editorial changes were made to the Title 30 amendments after Ordinance Committee review; the substantive changes are described below.

#### *Ministerial Architectural Design Requirements*

The proposed ADU ordinance Section T Architectural Review includes administrative design review as a ministerial action by the Community Development Director or designee within the limitations of the state law. The design criteria are intended to guide staff's review of ADU proposals, similar to administrative review standards for other minor development proposals, such that the criteria do not unreasonably restrict the ability of the homeowners to create ADUs. Following input from SFDB and HLC members as well as staff, the criteria were edited for clarification as follows:

- Criteria 7. Front Yard Location: Additional language was added to section b.ii. regarding screening newly detached ADUs in the front yard; and
- Criteria 8. Design Style: The term “match” was replaced with “be compatible with” at the request of HLC members. Staff does not recommend that *all* ADUs be subject to Criteria 8 as requested by the HLC, because this criteria is meant to capture ADUs proposed in the more sensitive and publicly visible locations of the City.

#### *Special Procedures for ADUs Constructed Entirely within Existing Structures*

Staff added provisions to Section W Special Procedures for ADUs Constructed Entirely within Existing Structures to ensure consistency with the requirements in the proposed ADU ordinance for newly constructed ADUs:

- Requirement 6: Garage conversions are required to replace the garage door opening with siding, residential window, or doors. This is to ensure the ADU can be identified as a residential unit;
- Requirement 7: Additional requirements in the High Fire Hazard Areas apply to these units; and
- Requirement 9: An ADU constructed within an existing structure requires a building permit and must have the same recorded agreements for owner occupancy and rental terms as a newly constructed ADU.

### **III. Application Process**

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, meaning that all the required information necessary for project analysis, as indicated on the ADU/JADU Building Permit Submittal Requirements checklist (pages 5–9 and the worksheet on page 13 of Attachment 6), has been accurately submitted. If the application is missing a key element, such as a site plan or floor plan, or if it does not meet the requirements and must be redesigned or requires a Modification, it is considered incomplete due to staff's inability to review all aspects of the project. The remainder of the ADU/JADU Submittal Packet includes information about the permitting process, an architectural review questionnaire that corresponds to the design criteria in the proposed ADU ordinance, and a summary of the ADU/JADU zoning standards.

After the effective date of the proposed Title 30 amendments (Section 30.185.040, *Accessory Dwelling Units*, and other related ordinance amendments), applicants for ADUs and JADUs in the inland areas of the City will be required to submit an application and related materials in accordance with Section 30.185.040. Applicability of Section 30.185.040 within the Coastal Zone will follow certification of Title 30 by the California Coastal Commission, tentatively expected in 2019. In the meantime, applications for ADUs in the Coastal Zone will continue to be subject to state law.

### **IV. 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 and 65852.22 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.

#### Findings

The City Council makes the following findings with respect to CEQA:

- CEQA Findings for City Council Adoption of the Amendments to Title 30 for ADUs pursuant to PRC Section 21080.17.

Local government actions in connection with preparation and adoption of an ordinance implementing the provisions of Section 65852.2 and 65852.22 of the Government Code are statutorily exempt from CEQA environmental review.

#### **BUDGET/FINANCIAL INFORMATION:**

This work effort has been underway since April 2017 and has required, on average, approximately 1.0 full-time equivalent (FTE) in the Planning Division (divided among a Project Planner, Associate Planner, and the City Planner), as well as assistance from Rincon Consultants, Inc. (\$17,658 professional services contract).

As of March 27, 2018, the City has received 323 applications for ADUs proposed under state law, which represents a 20% increase in zoning plan check workload. Staff anticipates that trend will slightly decrease upon adoption of a local ADU ordinance. Review of applications for ADUs against a local ordinance should be more expeditious than interpreting and applying the current state law.

#### **V. Next Steps**

The City is required to submit the adopted ordinance to the State Department of Housing and Community Development within six weeks of Council adoption. Soon after, the adopted ADU ordinance will be incorporated into Title 30 and submitted to the California Coastal Commission as a Local Coastal Program Amendment for certification.

#### **ATTACHMENTS:**

1. California Government Code Sections 65852.2 and 65852.22
2. Planning Commission Minutes, January 25, 2018
3. Single Family Design Board Minutes, February 20, 2018
4. Historic Landmarks Commission Minutes, February 21, 2018
5. Ordinance Committee Minutes, March 6, 2018
6. Accessory Dwelling Unit/Junior Accessory Dwelling Unit Submittal Packet

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Jerry Hittleman, Senior Planner, Rincon Consultants

**SUBMITTED BY:** George Buell, Community Development Director

**APPROVED BY:** City Administrator's Office