



**ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY  
PLANNING DEPARTMENT  
STAFF REPORT**

**TO:** Castro Valley Municipal Advisory Council

**HEARING DATE:** January 23, 2017

**GENERAL INFORMATION**

**PROJECT:** County-initiated amendments to the Alameda County General Ordinance Code to update regulations on secondary units

**PROJECT PROPONENT:** Alameda County Community Development Agency

**PROPOSAL:** Consideration of Temporary Ordinance Amendments Related to Secondary (Accessory Dwelling) Units to bring Alameda County into compliance with a recently approved state statute

**ZONING / SPECIFIC PLAN DESIGNATION:** Countywide in all residential zoning districts

**GENERAL PLAN DESIGNATION:** Countywide in all residential land use designations

**ENVIRONMENTAL REVIEW:** The proposed amendments have been reviewed in accordance with the provisions of the California Environment Quality Act (CEQA) and have been found to be exempt from further environmental review pursuant to CEQA Guidelines Section 15282(h) and Public Resources Code Section 21080.17 which exempt the local adoption of ordinances regarding second units in a single-family or multifamily residential zone to implement Government Code section 65852.2 and pursuant to the general rule in CEQA Guidelines Section 15061(b)(3), which specifies that CEQA applies only to any project with the potential to cause a significant impact on the environment.

**RECOMMENDATION**

Staff recommendation to the Castro Valley Municipal Advisory Council is to recommend approval, to the Board of Supervisors, of the proposed temporary Ordinance amendments and two-step approval process for attaining compliance with new state requirements related to secondary (accessory dwelling) units.

**BACKGROUND**

In September 2016, California State Assembly Bill 2299 and State Senate Bill 1069 were signed into law. The combined bills took effect on January 1, 2017, and modified California Government Code Section 65852.2 (State Law) (Exhibit A), which governs how local agencies regulate “Accessory Dwelling

Units,” formerly and commonly known as secondary units, second units or in-law units. The new State Law is intended to address the shortage of affordable housing by easing restrictions on accessory dwelling units (ADUs). Specifically, the conditions under which they must be permitted have been expanded and use of discretion by local agencies in reviewing and permitting ADUs has been prohibited unless the purpose of exercising such discretion is to facilitate the creation of new ADUs. The State Law includes several mandatory elements but also provides flexibility in how some of those elements are applied. The mandatory elements would expand areas where ADUs must be permitted and ease parking requirements, size limits, and the collection of ADU related fees. The Law requires that new ADUs be allowed in single and multi-family residential neighborhoods on properties with existing single family homes that have adequate water and sanitary services, and when there would be no threat to public health or safety. However, if the minimum requirements of State Law are satisfied by a local ordinance, the ordinance may place some restrictions on the locations where ADUs may be permitted and the sizes of ADUs, and may implement development standards such as minimum setbacks and height limits.

The State Law requires any local ordinance to comply with the new standards. Effective January 1, 2017, any local ordinance not in compliance with State Law will be deemed “null and void” and the local agency will be required to apply the new State Law standards to new ADUs.

The following list identifies pertinent mandatory elements of the State Law:

- The ADU may not be sold separately from the main dwelling unit.
- The lot is zoned for single-family or multifamily use and contains one existing single-family dwelling.
- The ADU is on the same lot as the main dwelling unit.
- The maximum size of the ADU is 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.
- The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.
- No setback shall be 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 shall be required for an accessory dwelling unit that is constructed above a garage.
- Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom.
- 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.
- When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, 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.
- Applications for new ADUs must be approved ministerially (e.g. through building permit process) within 120 days of receipt.
- The new ADU shall not be considered residential growth or be counted toward density limitations.
- A local agency may not require a new or separate utility connection directly between the accessory dwelling unit and the utility if the ADU is 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.
- Notwithstanding any other section, no additional parking for an ADU may be required when:
  - the property is located within one half mile of public transit;

- the property is located within an architecturally and historically significant historic district;
- the property is entirely within the existing space of the existing primary residence or an existing accessory structure;
- on street parking permits are required but not offered to the occupant of the accessory dwelling unit; or,
- there is a car share vehicle located within one block of the accessory dwelling unit.

The following list identifies elements where local agencies are permitted flexibility in regulating ADUs to suit local needs:

- Designate areas where accessory dwelling units may be permitted. The designation of areas may be based on criteria including, but not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.
- Impose standards related to number of parking spaces (except in the cases described in the last bullet in the previous section), height, setbacks (except for detached garage and accessory structure conversions), lot coverage, landscaping, architectural review (via design guidelines approvable by staff), 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.
- A local agency may reduce or eliminate parking requirements for any accessory dwelling unit.
- A local agency may require that the property be owner-occupant or that the property be used for rentals of terms longer than 30 days.

Staff has referenced the State Law against current County regulations and determined that County development standards and approval procedures contained in the Alameda County General Ordinance Code (Code), certain specific plans and one County policy are not in full compliance with the new State Law and, therefore, would be deemed “null and void”. Thus, the County would be required to defer to the strict mandates of the State Law without the flexibility allowed when a compliant local ordinance is in place. Staff is proposing temporary amendments to the Code in order to bring the ordinance into compliance with the State Law. This would allow staff to concurrently work with decision makers and the community to assess whether additional amendments are desired and to develop permanent regulations that serve the needs of County residents. With temporary standards in place, the County could continue to apply development standards related to size, setbacks, height and the like, while exploring what, if any, other changes may be needed to implement the new State Law or are desired by the community. Temporary standards adopted within 120 days from January 1, 2017 would also enable the County to regulate new ADUs in accordance with the local ordinance, as opposed to being forced to approve ADUs meeting only the minimum mandatory elements of the new State Law. Further, they would allow time to examine the appropriate locations for ADUs in the unincorporated County and for the public to participate in updating specific plans and other regulations that govern their communities. The proposed temporary Code amendments are shown in Exhibit B. Staff is proposing a two-step compliance process, as follows:

- Step 1: Implement “temporary” Code amendments in order to quickly comply with State Law and minimize the period during which the State Law standards are applicable to new ADU applications. Current development standards would remain in place as allowed by State Law and new ADUs would be allowed where they are currently allowed by right. Approval of new ADUs would be paused in locations where ADUs were only conditionally permitted with a discretionary permit while new regulations are being developed and where the revision process is time-intensive, as is the case with specific plan updates and evaluations of where ADUs should be permitted.
- Step 2: While the temporary ordinance is in place, complete a thorough evaluation of areas that can support ADUs, develop a proposal for permitting procedures within specific plan areas,

present the information for community input and discussion and present proposed permanent ADUs standards to decision makers.

It should also be noted that in addition to the new State Law, the Alameda County Community Climate Action Plan (Exhibit C), adopted in February 2014, identifies reducing parking restrictions and allowing ADUs in certain residential areas near public transit as a short-term greenhouse gas reduction strategy. This document was fully vetted by the community and indicates that there may a desire to ease parking restrictions on ADUs and expand the locations in which they are permitted. This measure was expected to be implemented within 1-2 years following approval of the Climate Action Plan, and is in line with the State Law. In addition to reducing greenhouse gas emissions in areas where public transit is available, ADUs also provide affordable rental housing, put more rental housing on the market and can assist existing and prospective property owners to afford to purchase property.

## **STAFF ANALYSIS**

Staff has referenced the new State Law against the Alameda County General Ordinance Code as well as local area Specific Plans and other relevant County plans and policies, in order to identify where changes to local regulations are needed to attain compliance. Several discrepancies were identified during staff review; these generally pertain to approval procedures and criteria, parking requirements and park dedication fees. The Code currently allows for the creation of ADUs within its SU/CSU (Secondary Unit/Conditional Secondary Unit) Overlay district, where they are permitted by right if all applicable standards are met, and which is known to have infrastructure sufficient to accommodate new ADUs. This would include areas within Homeowners' Associations (HOAs), if any, that may have restrictions on the creation of ADUs. The SU/CSU overlay generally includes the Castro Valley area, part of Cherryland and Ashland, and two individual properties in the eastern portion of the County. However, it's possible that other areas within the County contain properties with space and infrastructure sufficient to support the creation of new ADUs. For instance, single family districts in flat areas with lot sizes at a minimum of 5,000 square feet, with sewer and water service and improved public streets may be able to accommodate ADUs. Large lot single-family residential districts where water and on or off-site sewer services are available may also be able to accommodate new ADUs without much difficulty. However, many such areas are not included within the SU/CSU overlay districts and are not currently permitted by right, as is now required by State Law. Based on inquiries made by staff, at least 63 HOAs are present in Alameda County and 23 of those do not have formal prohibitions against ADUs. Within the San Lorenzo Village Homes Association area, ADUs are not allowed. How HOAs choose to address ADUs would be between them and the residents within their boundaries and is not related to County compliance with the new State Law. However, this consideration is worth noting since several County residences are located within HOAs.

SU/CSU District requires a total of four off-street parking spaces on properties with ADUs, which exceeds the maximum amount of parking allowed by the new State Law, does not account for the special circumstances where no parking can be required, and does not account for garage conversions, when only replacement parking can be required. The same is true concerning the Fairview Specific Plan, Madison Avenue Specific Plan, Little Valley Specific Plan, and Rural Residential Policy which applies Countywide to larger single family lots with single family homes in rural areas. There are also obsolete provisions related to Conditional Use Permits and Site Development Review requirements within the CSU overlay district, which were superseded by state law several years ago and are no longer enforceable. The aforementioned specific plans and Rural Residential Policy also include discretionary review processes such as rezoning, Site Development Review and review by local homeowner's associations in order to approve ADUs. This is no longer permissible and these processes will need to be modified in order to comply with State Law. Since utility connection and Park Dedication fees may only be assessed for new attached or detached ADUs which expand an existing building envelope, the Code

section regulating Park Dedication fees, which now applies to all new ADUs, will also need to be revised. In order to ensure consistency throughout the Code and with specific plans, some other minor edits will be needed.

The above described Code inconsistencies related to parking, CSU requirements and Park Dedication fees can be addressed relatively quickly by approving a series of minor text amendments that meet the related requirements of State Law. However, the locational aspects of the County's current requirements will require a more in-depth analysis and public input in order to assess whether the locations where ADUs are permitted should be expanded. Extensive public input will also be critical to revising approval criteria contained within the Fairview Specific Plan, Madison Avenue Specific Plan, Little Valley Specific Plan and Rural Residential Policy. This is especially true since discretionary approval can no longer be required. Accordingly, amending the above plans and identifying suitable areas for ADUs will require more than the 120 days that State Law allows for ministerial (e.g., building permit) application review and approval. In order to ensure a complete analysis by staff, adequate public input, and a full and meaningful discussion by decision makers, several weeks, if not months, of public discussion will be necessary.

Should the County opt to forego the proposed two-step compliance process and instead move forward with developing permanent regulations, there would likely be a period of several months when new ADUs must be permitted in all single and multi-family residential district on properties that contain an existing single family residence. In these cases, no size, setback, height, lot coverage, time or owner-occupancy restrictions could be applied aside from what the new State Law permits.

## **CONCLUSION**

The proposed amendments to Titles 12 and 17 of the Alameda County Zoning Ordinance are recommended in order to comply with the minimum requirements of State Law, while allowing County staff, stakeholders and decisions makers to fully evaluate and implement permanent regulations governing the creation of new ADUs.

## **NEXT STEPS**

Staff will present the proposed amendments and two-step process to the Board of Supervisors Unincorporated Services Committee on Wednesday, January 25, 2017, to the Transportation and Planning Committee and Planning Commission on February 6, 2017 and to the Board of Supervisors in February 2017, on a date to be determined.

## **ATTACHMENTS:**

- Exhibit A – California Government Code Section 65852.2
- Exhibit B - DRAFT Ordinance Amending Titles 12 and 17 of the Ordinance Code of the County of Alameda Zoning Ordinance, Fairview Area Specific Plan, Little Valley Specific Plan and Madison Avenue Specific Plan regarding Accessory Dwelling Units
- Exhibit C – Alameda County Community Climate Action Plan Excerpt – Land Use Measure L2

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