ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT
STAFF REPORT

TO: **Alameda County Planning Commission**

HEARING DATE: February 20, 2024

GENERAL INFORMATION

PROJECT:	County-initiated amendments to the Alameda County General Ordinance Code to update regulations on Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) to comply with current State legislation
PROJECT PROPONENT:	Alameda County Community Development Agency
PROPOSAL:	Consideration of Ordinance Amendments Related to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) to bring Alameda County into compliance with a recently updated State legislation.
ZONING / SPECIFIC PLAN DESIGNATION:	Countywide in all residential and mixed-use residential zoning districts
GENERAL PLAN DESIGNATION:	Countywide in all residential and mixed-use 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 multi-family 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 recommends that the Planning Commission recommend adoption of the attached Ordinance Amendments related to Accessory Dwelling Units and Junior Accessory Dwelling Units to the Alameda County Board of Supervisors and adoption of the CEQA Exemption 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 multi-family 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.

BACKGROUND

The new California ADU law, AB 2221, was signed by Governor Newsom on September 28, 2022, and went into effect on January 01, 2023. The law clarifies old legislation to ensure that ADU guidelines and regulations are clearer and less prone to misinterpretation, thereby reducing obstacles to ADU development. Updates to the California ADU law, AB 1033, which went into effect on January 01, 2024, allows local jurisdictions such as Alameda County to voluntarily adopt a local ordinance to allow the separate conveyance of the Primary Dwelling Unit and Accessory Dwelling Unit or Units as condominiums. Staff considers that County adoption of AB 1033 would incentivize further development of ADUs in the unincorporated areas of Alameda County. Staff therefore recommends adoption of the attached ADU and JADU Ordinance updates, including the provision to allow air-space condominium subdivisions for ADUs.

STAFFANALYSIS

The changes brought about by AB 2221 include:

Redefining height restrictions – AB 2221 requires all cities to change their ADU size limits to at least 16 feet, paving the way for more two-story ADUs. There are also added regulations that require cities to allow ADUs to be built even higher than 16 feet in certain circumstances. For example, if an ADU is attached to the primary dwelling, the height limitation is 25 feet. If the structure is within ½ a mile from public transit or the property already has a multi-family dwelling that is two stories high, the height limitation is 18 feet.

Modifications to the 60-day rule – Previously, an ADU permit had to be approved or denied within 60 days. However, many planning departments started simply denying permit applications once the 60 days were up. To prevent this from happening, AB 2221 requires cities to specify all the reasons an application is rejected, not just a few. The language of the law was also changed from “local agencies” to “permitting agencies.” This means that any entity involved in the review of an ADU permit (i.e. water districts, utilities, etc.) is held to the 60-day requirement, not just the planning board.

Front setback – The front setback requirement for ADUs is better defined in AB 2221. If an ADU is under 800 sq ft, front setback requirements now cannot prevent an ADU from being built.

Multi-family housing – AB 2221 makes it easier to build multi-family housing by allowing builders to propose and build new ADUs in new multi-family housing concurrently. Previously, developers had to complete a multi-family building project before starting ADU development.

Overall, AB 2221 simplifies the ADU development process, eliminates some of the restrictions that may have made it difficult for people to build ADUs, and makes it easier for Californians to have additional housing options on their properties.

The changes brought about by AB 1033 include:

Per AB 1033, the proposed ordinance allows the separate conveyance of the Primary Dwelling Unit and Accessory Dwelling Unit or Units as condominiums.

The County’s secondary dwelling unit are being removed:

In addition to the adoption of the ADU updates, this proposal includes elimination of the Secondary Unit section of the Alameda County Zoning Ordinance, Article IV - Combining SU Districts, Sections 17.30.100 and 17.30.110. The SU Districts ordinance is being superseded by the ADU ordinance updates.

PUBLIC COMMENTS

Proposed Amendment from the Hayward Hills Property Owners Association: (insertion in bold type.)

> ***17.55.XXX***
> *Accessory Dwelling Units and Junior Accessory Dwelling Units shall be permitted in all zoning districts that permit Single-family, Multifamily, or Mixed-use dwellings.* ***Applications for ADUs in zoning districts served by private septic systems (OTWS) shall require approval of the Department of Environmental Health.*** *By-right approvals are granted for ADUs measuring up to 1,200 sq. ft. in floor area, with policies in place to review and approve larger projects.*

Rationale from the Hayward Hills Property Owners Association for proposed Amendment:

> *Government Code Section 65852.2 gives a local jurisdiction the authority to deny the creation of an ADU if "adequate water and sewer service is not available." The proposed amendment does not prohibit ADUs in areas served by private septic systems but adds the approval of the local health officer. 65852.2(ix).*

Staff agreed to present their proposal to the MACs, Planning Commission, and Board of Supervisors for their consideration to include in the County ADU / JADU ordinance. It is worth noting that approval by the County of Environmental Health septic system is already required as part of the ministerial Building Permit process prior to approval for construction of an ADU or a JADU, just as it is already required prior to construction of any dwelling unit located on property with a septic system. Any residential construction requiring Building Permits is already required to comply with all construction and development codes, including ADUs on properties with septic system and on private streets. So, ADUs are already required to conform with the Department of Environmental Health's regulations regarding septic systems, and with the Fire Department regarding adequate Fire Access Lanes and access and egress.

In response to the above comments, Staff has made the following draft change to the ADU Ordinance (additional language shown in *underline italics* font below):

> **17.55.XXX Construction Phasing and Permitting.**
> Accessory Dwelling Units and Junior Accessory Dwelling Units shall be allowed to be established either simultaneously with or subsequent to the construction of a Primary dwelling unit that is located on the same lot of record and under one common ownership. *Applications for Accessory Dwelling Units and Junior Accessory Dwelling Units shall be subject to applicable Building Codes, and require approval of the County Building Inspection Department. Applications for Accessory Dwelling Units and Junior Accessory Dwelling Units on parcels served by private septic systems (on-site wastewater treatment systems) shall require approval of the County Department of Environmental Health.*

CONCLUSION

The proposed amendments to Title 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 to the Board of Supervisors in either January or February of 2024 and to the Board of Supervisors Unincorporated Services Committee, to the Transportation and Planning Committee and to the Board of Supervisors, on a date to be determined, but expected in February or March of 2024.

Schedule for March 2024 Board of Supervisors adoption:

- Fairview MAC — Tuesday, December 05, 2023
- Castro Valley MAC — Monday, December 11, 2023
- Eden MAC — Tuesday, December 12, 2023
- Sunol CAC — Wednesday, January 17, 2024
- Planning Commission — Tuesday, February 20, 2024
- Transportation and Planning — Monday, March 04, 2024
- Board of Supervisors — Thursday, March 14, 2024

ATTACHMENTS:

Exhibit A: California Government Code Section 65852.2
Exhibit B: DRAFT Planning Commission Resolution
Exhibit C: DRAFT Ordinance Amending Title 17 of the Ordinance Code of the County of Alameda regarding Accessory Dwelling Units and Junior Accessory Dwelling Units

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REVIEWED BY: Rodrigo Orduña, Assistant Planning Director

State of California

GOVERNMENT CODE

Section 65852.2

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose objective standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) Except as provided in Section 65852.26 and paragraph (10) of this subdivision, an accessory dwelling unit may be rented separate from the primary residence, but shall not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, except that the construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code (Title 24 of the California Code of Regulations), unless the building official or enforcement agency of the local agency makes a written finding based on substantial evidence in the record that the construction of the accessory dwelling unit could have a specific, adverse impact on public health and safety. Nothing in this clause shall be interpreted to prevent a local agency from changing the occupancy code of a space that was unhabitable space or was only permitted for nonresidential use and was subsequently converted for residential use pursuant to this section.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet 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.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) (A) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance

regulating the issuance of variances or special use permits. The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(B) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subparagraph (A), the permitting agency shall, within the time period described in subparagraph (A), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(4) The ordinance shall require that a demolition permit for a detached garage that is to be replaced with an accessory dwelling unit be reviewed with the application for the accessory dwelling unit and issued at the same time.

(5) The ordinance shall not require, and the applicant shall not be otherwise required, to provide written notice or post a placard for the demolition of a detached garage that is to be replaced with an accessory dwelling unit, unless the property is located within an architecturally and historically significant historic district.

(6) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(7) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(8) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed

or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, including an owner-occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer.

(9) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(10) In addition to the requirement that a local agency allow the separate sale or conveyance of an accessory dwelling unit pursuant to Section 65852.26, a local agency may also adopt a local ordinance to allow the separate conveyance of the primary dwelling unit and accessory dwelling unit or units as condominiums. Any such ordinance shall include all of the following requirements:

(A) The condominiums shall be created pursuant to the Davis-Stirling Common Interest Development Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code).

(B) The condominiums shall be created in conformance with all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)) and all objective requirements of a local subdivision ordinance.

(C) Before recordation of the condominium plan, a safety inspection of the accessory dwelling unit shall be conducted as evidenced either through a certificate of occupancy from the local agency or a housing quality standards report from a building inspector certified by the United States Department of Housing and Urban Development.

(D) (i) Neither a subdivision map nor a condominium plan shall be recorded with the county recorder in the county where the real property is located without each lienholder's consent. The following shall apply to the consent of a lienholder:

(I) A lienholder may refuse to give consent.

(II) A lienholder may consent provided that any terms and conditions required by the lienholder are satisfied.

(ii) Prior to recordation of the initial or any subsequent modifications to the condominium plan, written evidence of the lienholder's consent shall be provided to the county recorder along with a signed statement from each lienholder that states as follows:

"(Name of lienholder) hereby consents to the recording of this condominium plan in their sole and absolute discretion and the borrower has or will satisfy any additional terms and conditions the lienholder may have."

(iii) The lienholder's consent shall be included on the condominium plan or a separate form attached to the condominium plan that includes the following information:

(I) The lienholder's signature.

(II) The name of the record owner or ground lessee.

(III) The legal description of the real property.

(IV) The identities of all parties with an interest in the real property as reflected in the real property records.

(iv) The lienholder's consent shall be recorded in the office of the county recorder of the county in which the real property is located.

(E) The local agency shall include the following notice to consumers on any accessory dwelling or junior accessory dwelling unit submittal checklist or public information issued describing requirements and permitting for accessory dwelling units, including as standard condition of any accessory dwelling unit building permit or condominium plan approval:

"NOTICE: If you are considering establishing your primary dwelling unit and accessory dwelling unit as a condominium, please ensure that your building permitting agency allows this practice. If you decide to establish your primary dwelling unit and accessory dwelling unit as a condominium, your condominium plan or any future modifications to the condominium plan must be recorded with the County Recorder. Prior to recordation or modification of your subdivision map and condominium plan, any lienholder with a lien on your title must provide a form of written consent either on the condominium plan, or on the lienholder's consent form attached to the condominium plan, with text that clearly states that the lender approves recordation of the condominium plan and that you have satisfied their terms and conditions, if any.

In order to secure lender consent, you may be required to follow additional lender requirements, which may include, but are not limited to, one or more of the following:

(a) Paying off your current lender.

You may pay off your mortgage and any liens through a refinance or a new loan. Be aware that refinancing or using a new loan may result in changes to your interest rate or tax basis. Also, be aware that any subsequent modification to your subdivision map or condominium plan must also be consented to by your lender, which consent may be denied.

(b) Securing your lender's approval of a modification to their loan collateral due to the change of your current property legal description into one or more condominium parcels.

(c) Securing your lender's consent to the details of any construction loan or ground lease.

This may include a copy of the improvement contract entered in good faith with a licensed contractor, evidence that the record owner or ground lessee has the funds to complete the work, and a signed statement made by the record owner or ground lessor that the information in the consent above is true and correct."

(F) If an accessory dwelling unit is established as a condominium, the local government shall require the homeowner to notify providers of utilities, including water, sewer, gas, and electricity, of the condominium creation and separate conveyance.

(G) (i) The owner of a property or a separate interest within an existing planned development that has an existing association, as defined in Section 4080 of the Civil

Code, shall not record a condominium plan to create a common interest development under Section 4100 of the Civil Code without the express written authorization by the existing association.

(ii) For purposes of this subparagraph, written authorization by the existing association means approval by the board at a duly noticed board meeting, as defined in Section 4090 of the Civil Code, and if needed pursuant to the existing association's governing documents, membership approval of the existing association.

(H) An accessory dwelling unit shall be sold or otherwise conveyed separate from the primary residence only under the conditions outlined in this paragraph or pursuant to Section 65852.26.

(11) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) (1) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create or serve an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create or serve a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create or serve the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved.

(2) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to paragraph (1), the permitting agency shall, within the time period described in paragraph (1), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(D) Any height limitation that does not allow at least the following, as applicable:

(i) A height of 16 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit.

(ii) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. A local agency shall also allow an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit.

(iii) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.

(iv) A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling. This clause shall not require a local agency to allow an accessory dwelling unit to exceed two stories.

(d) Notwithstanding any other law, and whether or not the local agency has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), all of the following shall apply:

(1) The local agency shall not impose any parking standards for an accessory dwelling unit in any of the following instances:

(A) Where the accessory dwelling unit is located within one-half mile walking distance of public transit.

(B) Where the accessory dwelling unit is located within an architecturally and historically significant historic district.

(C) Where the accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(D) When onstreet parking permits are required but not offered to the occupant of the accessory dwelling unit.

(E) When there is a car share vehicle located within one block of the accessory dwelling unit.

(F) When a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit or the parcel satisfies any other criteria listed in this paragraph.

(2) The local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation as provided in clause (i), (ii), or (iii) as applicable, of subparagraph (D) of paragraph (2) of subdivision (c).

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) (i) Not more than two accessory dwelling units that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limitation in clause (i), (ii), or (iii), as applicable, of subparagraph (D) of paragraph (2) of subdivision (c) and rear yard and side setbacks of no more than four feet.

(ii) If the existing multifamily dwelling has a rear or side setback of less than four feet, the local agency shall not require any modification of the existing multifamily dwelling as a condition of approving the application to construct an accessory dwelling unit that satisfies the requirements of this subparagraph.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing multifamily dwelling.

(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose objective standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees

specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family dwelling, or upon separate conveyance of the accessory dwelling unit pursuant to paragraph (10) of subdivision (a).

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section shall supersede a conflicting local ordinance. This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform to current zoning standards.

(7) "Objective standards" means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.

(8) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(9) "Permitting agency" means any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.

(10) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(11) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(12) “Tandem parking” means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(*l*) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2), a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(Amended by Stats. 2023, Ch. 752, Sec. 2.5. (AB 1033) Effective January 1, 2024.)

THE PLANNING COMMISSION OF ALAMEDA COUNTY HAYWARD, CALIFORNIA

RESOLUTION NO. 24-XX RECOMMENDING BOARD OF SUPERVISORS APPROVAL OF AN ORDINANCE AMENDING TITLE 17 OF THE ALAMEDA COUNTY GENERAL ORDINANCE CODE REGARDING ACCESSORY DWELLING UNITS (ADUs) AND JUNIOR ACCESSORY DWELLING UNITS (JADUs)

Introduced by Commissioner _____
Seconded by Commissioner _____

WHEREAS in January of 2023, the State of California Assembly Bill 2221 (AB 2221) went into effect, amending Government Code section 65852.2 regarding the regulation of Accessory Dwelling Units; and

WHEREAS in January of 2024, the State of California Assembly Bill 1033 (AB 1033) went into effect, allowing local jurisdictions to opt in to allow the separate conveyance of the Primary Dwelling Unit and Accessory Dwelling Unit or Units as condominiums; and

WHEREAS State law, as revised, restricts the manner in which local agencies can regulate Accessory Dwelling Units and Junior Accessory Dwelling Units; and

WHEREAS Title 17 of the County of Alameda General Ordinance Code regulates Accessory Dwelling Units and Junior Accessory Dwelling Units, including Sections 17.04.010, 17.06.030, 17.30.110, 17.52.780, 17.54.225 and 17.60.100; and

WHEREAS the Planning Commission did hold a public hearing on said proposed amendment at the hour of 6:00 p.m. on Monday, February 20, 2024; and

WHEREAS notice of public hearing was given as required by law; and

WHEREAS this Commission does find that the amendments to the Alameda County General Ordinance Code have been reviewed in accordance with the provisions of the California Environmental Quality Act (CEQA) and the proposed amendments 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; and

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, this Commission finds that the amendments incorporate revisions to the Municipal Code prompted by passage of California State Assembly Bill 2221 (Quirk-Silva), which amended California Government Code Section 65852.2 starting on January 01, 2023, to address the shortage of affordable housing by modifying the development standards and process by which cities review and permit Accessory Dwelling Units; and

WHEREAS, this Commission finds that the amendments incorporate revisions to the Municipal Code prompted by passage of California State Assembly Bill 1033, effective on January 01, 2024, that will incentivize further development of ADUs in the unincorporated areas of Alameda County by allowing air-space condominium subdivisions for ADUs; and

WHEREAS, this Commission finds that adding language to the ordinance to state that applications for Accessory Dwelling Units and Junior Accessory Dwelling Units shall be subject to applicable Building Codes, and require approval of the County Building Inspection Department, and that applications for Accessory Dwelling Units and Junior Accessory Dwelling Units on parcels served by private septic systems (on-site wastewater treatment systems) shall require approval of the County Department of Environmental Health, further clarifies the permitting necessary to develop Accessory Dwelling Units and Junior Accessory Dwelling Units in unincorporated Alameda County.

NOW THEREFORE

BE IT RESOLVED that this Planning Commission does hereby recommend to the Alameda County Board of Supervisors adoption of a Declaration of exemption from environmental review as allowed by California Environmental Quality Act (CEQA) for this proposal because the amendments to the Alameda County General Ordinance Code have been reviewed in accordance with the provisions of CEQA and the proposed amendments 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; and

BE IT FURTHER RESOLVED that this Planning Commission does hereby recommend to the Alameda County Board of Supervisors adoption of the proposed amendments to the Sections 17.04.010, 17.06.030, 17.30.110, 17.52.780, 17.54.225 and 17.60.100 of Title 17 of the Alameda County General Ordinance Code related to Zoning, as set forth in Exhibit C.

ADOPTED BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSENT:

EXCUSED:
ABSTAINED:

ALBERT LOPEZ - PLANNING DIRECTOR & SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY

Chapter 17.04 DEFINITIONS

Section:

17.04.010 Definitions.

"Accessory Dwelling Unit" (ADU) means an accessory, second, or secondary unit that is attached or detached which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as a Single-family dwelling, Multifamily dwelling, or Mixed-use dwelling. An Accessory Dwelling Unit also includes the following:

1. An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

2. A manufactured home, as defined in Section 18007 of the Health and Safety Code." Accessory structure" means a detached subordinate structure or building on a lot, the use of which is appropriate, incidental and customarily or necessarily related to the district and to the principal use of the lot or to that of a main building on the lot.

"Conversion" means the modification to the occupancy of a legally existing space within the existing volume of a building or covered structure without expansion, except up to 150 sq. ft. of expansion as allowed for ingress and egress.

"Junior Accessory Dwelling Unit" (JADU) means an accessory, second, or secondary unit that is fully contained within a Single-family dwelling or within an attached garage and which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, and cooking on the same parcel and within the same building as one Primary Dwelling Unit. It shall not exceed 500 sq. ft in floor area. Junior Accessory Dwelling Units may share bathroom facilities with the Primary Dwelling Unit and may share central utility systems of the main home. A Junior Accessory Dwelling Unit also includes the following:

1. An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

"Mixed-use dwelling" means a building containing one or more Primary Dwelling Units and one or more non-residential units.

"Multifamily dwelling" means two or more attached Primary Dwelling Units on one lot.

"Primary Dwelling Unit" is a residential living unit such as a Single-family dwelling, Multifamily dwelling, or Mixed-use dwelling. A Primary Dwelling Unit is distinct from an Accessory Dwelling Unit or a Junior Accessory Dwelling Unit. Examples of Primary units include a Single-family dwelling (i.e., one Primary Dwelling Unit), Multifamily dwelling such as a duplex (i.e., two Primary Dwelling Units) or four-plex (i.e., four Primary Dwelling Units), or a Mixed-use dwelling (containing one or more Primary Dwelling Units).

~~"Secondary (or accessory dwelling) unit" means an accessory, second or secondary unit that is an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as one single-family dwelling is situated. An accessory dwelling unit also includes the following:~~

~~1.An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.~~

~~2.A manufactured home, as defined in Section 18007 of the Health and Safety Code.~~

"Single-family dwelling" means one or more detached Primary Dwelling Units on one lot.

"Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar, or unused underfloor space is more than six feet above grade as defined herein, or more than fifty (50) percent of the total perimeter, or is more than twelve (12) feet above grade as defined herein at any point, such basement, cellar, or unused underfloor space shall be considered a story. A loft or mezzanine that is enclosed with an interior partition wall or has a floor area of more than 1/3 the floor area of the story below is considered a story.

~~"Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar, or unused underfloor space is more than six feet above grade as defined herein, or more than fifty (50) percent of the total perimeter, or is more than twelve (12) feet above grade as defined herein at any point, such basement, cellar, or unused underfloor space shall be considered a story.~~

Chapter 17.06 A DISTRICTS

Sections:

17.06.030 Permitted uses.

The following principal uses are permitted in an A district:

H. Accessory Dwelling Units per Chapter 17.55, ~~One secondary dwelling unit per~~ on a building site ~~on parcels twenty-five (25) acres in size or larger that are zoned for not more than one dwelling and have one but no more than one dwelling unit on the parcel~~ subject to the following requirements:

1. The ~~secondary~~ Accessory ~~d~~Dwelling ~~u~~Unit or Accessory Dwelling Units shall be on the same building envelope as the ~~primary unit~~ Primary Dwelling Unit;

2. Accessory Dwelling Units not subject to floor area regulations of Chapter 17.55 shall be subject to maximum floor area of one thousand two hundred (1,200) square feet ~~On parcels less than one hundred (100) acres, the secondary dwelling unit shall be no larger than two thousand (2,000) square feet in area; on parcels one hundred (100) acres or~~

~~larger the secondary dwelling unit shall be no larger than two thousand five hundred (2,500) square feet in area;~~

3. The ~~secondary~~ Accessory ~~d~~Dwelling ~~u~~Unit larger than herein above and not subject to floor area regulations of Chapter 17.55 shall be subject to site development review pursuant to Section 17.54.210 et seq.; and

4. The ~~secondary~~ Accessory ~~d~~Dwelling ~~u~~Unit subject to rezoning or site development review shall be subject to and consistent with the provisions of the county policy on secondary dwelling units in agricultural and rural residential areas. Notwithstanding the requirements of Section 17.54.220(A), for ~~secondary u~~Accessory ~~d~~Dwelling ~~u~~Units on parcels that are less than one hundred (100) acres in size and subject to site development review, the planning commission shall decide applications for site development review under this section, and a public hearing is required;

~~Article IV Combining SU Districts~~

~~17.30.100 Combining SU district—Intent.~~

~~The district, hereinafter designated as combining SU (secondary unit) district, is established to be combined with residential districts which are characterized by lot sizes, parking areas, street improvements, public utilities, and other residential support systems which can best accommodate them.~~

~~(Prior gen. code § 8-44.9)~~

~~(Ord. No. 2010-71 , § 44, 12-21-10; Ord. No. 2017-13 , § 2(Pt. 2), 4-25-17)~~

~~17.30.110 SU combining district—Permitted uses.~~

~~In addition to those uses permitted in this district with which it is combined, one secondary dwelling unit per building site is permitted subject to the following requirements:~~

~~A. Parking.~~

~~1. One parking space per unit or per bedroom, available for tenant and visitor parking and having a nine-foot minimum width, an eighteen (18) foot minimum depth, and an area not less than one hundred eighty (180) square feet, or be designed as specified in the Alameda County Residential Design Guidelines, must be present on the property. Such parking may be provided on an existing driveway or within a required setback and may be tandem.~~

~~2. No additional parking for the secondary unit is required when:~~

~~a. The property is located within one-half mile of public transit;~~

~~b. The property is located within an architecturally and historically significant historic district;~~

~~c. The property is entirely within the existing space of the existing primary residence or an existing accessory structure;~~

~~d. On street parking permits are required but not offered to the occupant of the accessory dwelling unit; or,~~

~~e. There is a car share vehicle located within one block of the accessory dwelling unit.~~

~~3. Except for secondary units described in subsection 17.30.110(A)(2), when a garage, carport, or covered parking space is eliminated in conjunction with the construction of a secondary unit, the eliminated off street parking spaces shall be replaced on-site. The replacement space(s) may be located in any configuration on the same lot as the secondary unit and may be covered, uncovered spaces, tandem spaces, or accessible by the use of mechanical automobile parking lifts.~~

~~B. The attached secondary unit shall have a direct external entry and shall be limited to a maximum size of fifty (50) percent of the existing living area or six hundred forty (640) square feet, whichever is less. In all other respects the regulations of the district within which the SU district is combined shall remain the same, except as follows:~~

~~1. No setback shall be required for an existing garage that is converted to an accessory dwelling unit, except as required by fire or building codes.~~

~~2. Units contained within the existing space of a single-family residence or accessory structure need only have side and rear setbacks sufficient to ensure fire safety.~~

~~C. The detached secondary dwelling shall be clearly subordinate to the existing single-family dwelling by size and appearance. A detached secondary unit shall be limited to one story, fifteen (15) feet in height, a maximum size of fifty (50) percent of the existing living area or six hundred forty (640) square feet, whichever is less, a minimum of ten feet from the existing dwelling, and located to the rear of the existing dwelling. In all other respects the regulations of the district with which the SU district is combined shall remain the same.~~

~~D. The secondary unit shall not be sold separately from the primary residence.~~

~~E. The secondary unit shall not be rented for a period of less than thirty (30) days.~~

~~F. The property must be owner occupied.~~

~~(Prior gen. code § 8-44.10)~~

~~(Ord. No. 2010-71 , § 45, 12-21-10; Ord. No. 2017-13 , § 2(Pt. 2), 4-25-17)~~

17.52.780 Parking spaces—Size and location.

~~E~~except as provided for in Section 17.30.110, concerning secondary units, every required parking space ~~shall have an area not less than one hundred eighty (180) square feet and~~ shall have a width not less than nine feet, and a length of not less than eighteen (18) feet, or be designed as specified in the Alameda County Residential Design Guidelines, exclusive of maneuvering space and driveways which shall be provided as required to make each parking space independently accessible from the street at all times. No required parking space shall occupy any required front yard or any required street side yard of a corner lot, or any required setback from a driveway or any part of a required loading space. All required parking spaces shall be provided on the same building site as the use of building for which they are required.

(Prior gen. code § 8-63.4)

(Ord. No. 2017-13 , § 2(Pt. 2), 4-25-17)

17.54.225 Site development review for garage conversions—Applications.

Applications for garage conversions shall include the materials required pursuant to "Site Development Review—Applications" Section 17.54.230, except that site development reviews for garage conversions shall also include:

A. Elevations of all exterior wall surfaces of the existing on-site primary structure(s), and of the proposed garage conversion;

B. Annotated photographs of all street-facing exterior wall surfaces of the five neighboring properties at either side of the subject site, and of the ten closest properties across the street from the subject site;

C. Floor plans of all of the on-site primary structures and of the proposed garage conversion; and

D. Site plans showing the entire subject property and all structures therein, including the replacement storage space, the proposed on-site parking spaces, and showing site plans for all adjacent parcels that share property lines with the subject parcel, including their curb-cuts and driveways, and locations of all structures.

E. Site development review shall not be required for garage conversions when the purpose of the conversion is to create a new ~~secondary~~ Accessory Dwelling ~~u~~Unit within the space of an existing attached or detached garage, and the new unit meets the requirements contained in Section 17.~~30.110~~55, concerning ~~secondary~~ Accessory Dwelling ~~u~~Units.

(Ord. 2004-97 § 5)

(Ord. No. 2017-13 , § 2(Pt. 2), 4-25-17)

17.55 - Accessory Dwelling Units and Junior Accessory Dwelling Units.

17.55.010 Purpose.

The purpose of this section is to comply with state law, which authorizes cities and counties to set standards for the development of Accessory Dwelling Units and Junior Accessory Dwelling Units to increase the supply of small and affordable housing while ensuring that they remain compatible with existing Primary Dwelling Units, neighborhoods, and rural areas.

17.55.020 Ministerial Approval.

Notwithstanding the requirements established in the previous sections of this chapter, the County shall ministerially approve an application for a building permit within an agricultural, residential, or mixed-use zoning district to create any allowable Accessory Dwelling Unit or Junior Accessory Dwelling Unit without discretionary review or a hearing.

17.55.030 Requirement to Establish as and Remain Accessory to a Primary Dwelling Unit.

1. Accessory Dwelling Units: Will be permitted to be established as a permanent housing option on any property that either contains or is constructed concurrently with a Primary Dwelling Unit, and when established in compliance with state and local ordinances.

2. Junior Accessory Dwelling Units: Will be permitted to be established as a permanent housing option on any property in a Single-Family Residence (R-1) Zoning District or the Planned Development (PD) Zoning District based on the R-1 Zoning District that either contains or is constructed concurrently with a Single-family dwelling, and when established in compliance with state and local ordinance.

Refer to section 17.04.010 for definitions of various types of Accessory Dwelling Units and Junior Accessory Dwelling Units.

17.55.040 Permitted Zones.

Accessory Dwelling Units and Junior Accessory Dwelling Units shall be permitted in all zoning districts that permit Single-family, Multifamily, or Mixed-use dwellings. By-right approvals are granted for ADUs measuring up to 1,200 sq. ft. in floor area subject to policies in place to review and approve larger projects.

17.55.050 Density Calculation.

Accessory Dwellings Units and Junior Accessory Dwelling Units shall not be counted when calculating the maximum permitted density requirements of a property; however, may be counted to meet minimum density requirements.

1. Single-family dwellings: The maximum number of Junior Accessory Dwelling Units on a Building Site shall be one. The maximum number of Accessory Dwelling Units on a Building Site shall be one attached and one detached; this applies to each Single-family dwelling on a property.

2. Multifamily dwellings: The maximum number of Accessory Dwelling Units on a Building Site shall be one for every four existing Multifamily dwelling units (rounded down with a minimum of one) and two detached Accessory Dwelling Units and no Junior Accessory Dwelling Units.

17.55.060 Site and Building Development Requirements.

1. For Single-family dwellings:

    a. Accessory Dwelling Units

        i. May be attached to the Single-family dwelling, detached from the Single-family dwelling, or may involve the conversion of floor area of an existing legal structure.

    b. Junior Accessory Dwelling Units

        i. Shall be contained within the exterior walls of an existing or proposed Single-family dwelling;

        ii. May share bathroom facilities with the Primary Dwelling Unit.

2. For Multifamily dwellings:

    a. Accessory Dwelling Units are allowed within the portions of existing Multifamily dwellings that are not currently used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

    b. Junior Accessory Dwelling Units are prohibited.

3. For Mixed-use dwellings: the conversion of a nonresidential portion into an Accessory Dwelling Unit is not allowed.

4. For all projects.

    a. Shall have at least an efficiency kitchen including a cooking facility with appliances, a food preparation counter, and storage cabinets of reasonable size in relation to the unit;

    b. Shall have a separate entrance from the Primary Dwelling Unit. Access to the public right-of-way may be provided through the rear yard of the Primary residence or a dedicated pathway. Internal connection to the Primary Dwelling Unit is optional, except for Junior Accessory Dwelling Unit sharing a bathroom with a Primary Dwelling Unit which must have both an internal connection and separate entrance.

17.55.070 Development Standards for Accessory Dwelling Units.

1. Required yards (setbacks):

a. Side, street side, and rear: Minimum required 4-foot side and rear yard. This shall not apply to development of Accessory Dwelling Units by conversion of existing structures.

b. Front: Minimum is the same as for Primary Dwelling Unit. For Accessory Dwelling Units measuring less than 800 sq. ft. in area, front setback can be occupied if there is no other legal physical location on the property to accommodate the building footprint.

2. Distance Separation: Six-foot separation minimum from any other building.

3. Height:

a. If a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit and not meeting setbacks for Primary Dwelling Unit: Maximum 16 feet in building height; or

b. Up to 18 feet if:

i. a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit located within one-half mile walking distance of a 'major transit stop' or a 'high-quality transit corridor', as defined in Section 21155 of the Public Resources Code; and

ii. to accommodate a roof pitch on the Accessory Dwelling Unit that is aligned with the roof pitch of the Primary Dwelling Unit, a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit located within one-half mile walking distance of a 'major transit stop' or a 'high-quality transit corridor', as defined in Section 21155 of the Public Resources Code can be up to 20 feet in height.

c. If meeting required Primary Dwelling Unit setbacks, then an accessory dwelling unit either detached or attached to a Primary Dwelling Unit on a lot with an existing or proposed single family dwelling unit may apply the lesser of 25 feet or the height limit for the existing or proposed Primary Dwelling Unit.

4. Stories:

a. Maximum one story for new construction; or

b. Maximum two stories where practicable within a conversion with no building envelope expansion; or

c. If meeting required setbacks (either detached from or attached to a Primary Dwelling Unit), then maximum two stories.

5. Exemptions: For Accessory Dwelling Units measuring up to 800 sq. ft. in floor area, none of the following County development standards apply:

a. floor area ratio (FAR);

b. lot coverage; or

c. maximum developable parcel slope limitations.

6. Additional: For attached Accessory Dwelling Units measuring greater than 800 sq. ft. in floor area, development standards applying to the Primary Dwelling Unit(s) shall apply except for required side and rear yard setback development standards.

17.55.080 Size Limitations.

1. Floor Area Calculation:

The size of the unit shall be measured from the side of the exterior wall of the dwelling unit to the opposing exterior wall face enclosing the unit, or to the centerline of the furthest opposing interior wall that separates the Accessory Dwelling Unit or Junior Accessory Dwelling Unit and Primary Dwelling Unit living space. Carports, covered porches and patios, chimneys, exterior stairwells, and mechanical rooms are not counted toward the determination of floor area.

2. Accessory Dwelling Units:

a. The following development standards apply to newly constructed detached Accessory Dwelling Units:

i. If the detached Accessory Dwelling Unit is to contain 0 or 1 bedrooms, then limited to 850 sq. ft. maximum.

ii. If the detached Accessory Dwelling Unit is to contain 2 or more bedrooms, then limited to 1,200 sq. ft. maximum:

iii. If the property contains a Junior Accessory Dwelling Unit, then a detached Accessory Dwelling Unit shall not exceed 800 sq. ft. in floor area.

b. The following development standards apply to newly constructed attached Accessory Dwelling Units:

i. Maximum 50% floor area of the Single-family dwelling or 1,200 sq. ft., whichever is less. (A minimum of 800 sq. ft. is allowed by-right regardless of size of the Single-family dwelling.)

c. The conversion of an existing accessory structure or a portion of the existing Single-family dwelling to an ADU shall not be subject to ADU size requirements. Should the accessory structure or existing Single-family dwelling be expanded beyond 150 s. ft. to create an ADU, then the ADU shall be subject to the size maximums listed herein.

3. Junior Accessory Dwelling Units

a. A Junior Accessory Dwelling Unit shall measure no more than 500 sq. ft. in size, contained within the exterior walls of a proposed or existing Single-family dwelling.

17.55.090 Parking.

One (1) on-site parking space is required for each Accessory Dwelling Unit and Junior Accessory Dwelling Unit, and notwithstanding other development regulations, may otherwise be located within front yard or street side yard setbacks. On-site parking space is not required in the following instances:

1. Site is located within one-half mile walking distance of public transit;

2. Site is located within an architecturally or historically significant property or district;

3. When the project involves converting enclosed parking of the Primary Dwelling Unit;

4. When on-street parking permits are required but not offered to the occupants; or

5. When there is a car share vehicle located within one block.

17.55.100 Construction Phasing and Permitting.

Accessory Dwelling Units and Junior Accessory Dwelling Units shall be allowed to be established either simultaneously with or after the construction of a Primary Dwelling Unit that is located on the same lot of record and under one common ownership. Applications for Accessory Dwelling Units and Junior Accessory Dwelling Units shall be subject to applicable Building Codes, and require approval of the County Building Inspection Department. Applications for Accessory Dwelling Units and Junior Accessory Dwelling Units on parcels served by private septic systems (on-site wastewater treatment systems) shall require approval of the County Department of Environmental Health.

17.55.110 Demolitions and Reconstructions.

Accessory Dwelling Units established by conversion of an existing legal structure can be demolished and reconstructed within the same building volume at the same footprint location, and with no floor area or height limit.

17.55.120 Additions for Ingress and Egress.

A Junior Accessory Dwelling Unit located within a Single-family dwelling may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing structure. This expansion shall be limited to accommodate ingress and egress (e.g. covered front porch).

An Accessory Dwelling Unit located within a Single-family dwelling or accessory structure may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing structure. This expansion shall be limited to accommodate ingress and egress (e.g. covered front porch).

17.55.130 Tenancy Restrictions.

1. Deed Restriction. Before the County will issue a building permit for an Accessory Dwelling Unit and/or Junior Accessory Dwelling Unit, the property owner shall file with the County Recorder a declaration or agreement of restrictions, which has been approved by the County Counsel as to its form and content, containing a reference to the deed under which the property was acquired by the owner and stating that:

    a. The Accessory Dwelling Unit and/or Junior Accessory Dwelling Unit shall not be sold, transferred or owned separately from the Primary Dwelling Unit on the property, except when owned by certain nonprofit corporations per as subject to California Government Code Section 65852.26, as that section may be amended. Refer to section 17.55.140 for Separate Sale or Conveyance of an Accessory Dwelling Unit

    b. The Accessory Dwelling Unit and/or Junior Accessory Dwelling Unit may be occupied by or rented to a separate household living independently from the occupant(s) of the Primary Dwelling Unit; (or vice versa) provided, that the terms for separate occupancy of the accessory unit and/or Primary Dwelling Unit shall be longer than 30 days;

    c. The Accessory Dwelling Unit and/or Junior Accessory Dwelling Unit shall not be used or converted for use as visitor lodging for remittance; and

d. The restrictions shall be binding upon any successor in ownership of the property and lack of compliance shall result in legal action against the property owner.

2. Accessory Dwelling Units: the owner of the property is not required to reside on the property in either the Primary Dwelling Unit or Accessory Dwelling Unit.

3. Junior Accessory Dwelling Units: the property owner shall reside on the property in either the Single-family dwelling or the Junior Accessory Dwelling Unit. Evidence shall be provided with a recorded deed restriction prior to final occupancy of either unit. Owner occupancy is not required if the owner is a governmental agency, land trust, or housing organization.

17.55.140 Separate Sale or Conveyance of an Accessory Dwelling Unit

1. In addition to allowing the separate sale or conveyance of an Accessory Dwelling Unit pursuant to California Government Code Section 65852.26, the separate conveyance of the Primary Dwelling Unit and an Accessory Dwelling Unit or Accessory Dwelling Units as condominiums is also permissible. The following requirements shall apply:

2. The condominiums shall be created pursuant to the Davis-Stirling Common Interest Development Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code).

3. The condominiums shall be created in conformance with all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)) and all objective requirements of the Alameda County Ordinance Code Title 16 Subdivisions.

4. Before recordation of the condominium plan, a safety inspection of the Accessory Dwelling Unit shall be conducted as evidenced either through a certificate of occupancy from the local agency or a housing quality standards report from a building inspector certified by the United States Department of Housing and Urban Development.

a. Neither a subdivision map nor a condominium plan shall be recorded with the Alameda County Recorder without each lienholder's consent. The following shall apply to the consent of a lienholder:

i. A lienholder may refuse to give consent.

ii. A lienholder may consent provided that any terms and conditions required by the lienholder are satisfied.

b. Prior to recordation of the initial or any subsequent modifications to the condominium plan, written evidence of the lienholder's consent shall be provided to the Alameda County Recorder along with a signed statement from each lienholder that states as follows:

"(Name of lienholder) hereby consents to the recording of this condominium plan in their sole and absolute discretion and the borrower has or will satisfy any additional terms and conditions the lienholder may have."

c. The lienholder's consent shall be included on the condominium plan or a separate form attached to the condominium plan that includes the following information:

i. The lienholder's signature.

ii. The name of the record owner or ground lessee.

iii. The legal description of the real property.

iv. The identities of all parties with an interest in the real property as reflected in the real property records.

v. The lienholder's consent shall be recorded in the office of the Alameda County Recorder.

5. If an Accessory Dwelling Unit is established as a condominium, the County shall require the homeowner to notify providers of utilities, including but not limited to water, sewer, gas, and electricity, of the condominium creation and separate conveyance, as part of the subdivision process.

6.

a. The owner of a property or a separate interest within an existing planned development that has an existing association, as defined in Section 4080 of the Civil Code, shall not record a condominium plan to create a common interest development under Section 4100 of the Civil Code without the express written authorization by the existing association.

b. For purposes of this subparagraph, written authorization by the existing association means approval by the board at a duly noticed board meeting, as defined in Section 4090 of the Civil Code, and if needed pursuant to the existing association's governing documents, membership approval of the existing association.

8. An Accessory Dwelling Unit shall be sold or otherwise conveyed separate from the primary residence only under the conditions outlined in this Section 17.55.140 or pursuant to California Government Code Section 65852.26.

17.55.150 Design Criteria.

All new Accessory Dwelling Units and Junior Accessory Dwelling Units shall be reviewed by the Planning Director or their designee for consistency with this section. Applications shall demonstrate compliance with the following regulations by clearly identifying existing and proposed materials of the site landscaping, fencing, Accessory Dwelling Units, and Junior Accessory Dwelling Units and the Primary Dwelling Unit.

1. Design.

a. All detached Accessory Dwelling Units located at the front or side of a primary Residential Facility and visible from the public right-of-way shall be designed to meet the following objective design standards:

i. Roof pitch shall match the dominant roof pitch of the Primary Dwelling Unit

ii. Roof material shall match Primary Dwelling Unit;

iii. Exterior siding material and/or color shall match Primary Dwelling Unit;

iv. Window and door trim shall match the Primary Dwelling Unit

v. Covered porch shall be provided if the Primary Residential Facility has a porch;

vi. Fencing or landscaping shall be installed and maintained to buffer the view of the detached ADU from a street, road, or other public area.

b. All Accessory Dwelling Units attached to the Primary Dwelling Unit and all Junior Accessory Dwelling Units shall provide materials and colors of the exterior walls, windows, rooflines, and doors that match the Primary Dwelling Unit.

2. Privacy.

a. New Construction and Conversion: To maximize privacy on adjacent properties, windows that are located less than 5 feet from a rear or side property line shall be clerestory windows or use frosted or obscure glass. Balconies, decks, and doors shall be located on the exterior wall not adjacent to the nearest property line(s) when located five feet or fewer from any property line(s).

17.55.160 Park Dedication Fees.

No Park Dedication impact fees are required for Accessory Dwelling Units measuring less than 750 square feet in floor area and for all Junior Accessory Dwelling Units.

17.55.170 Nonconforming Facilities.

1. The County shall not require the correction of nonconforming zoning conditions prior to the issuance of a permit for Accessory Dwelling Units or Junior Accessory Dwelling Units except to comply with the California Building Code where said structure is not in compliance with current California Building Code standards.

2. Existing Unpermitted Structures not affecting proposed Accessory Dwelling Units: Correction of unpermitted structures on the same property as a proposed Accessory Dwelling Unit project shall not require correction unless they present a threat to public health or safety or affect the construction of the Accessory Dwelling Unit.

3. Existing Building Standards Violations: The County shall not require the correction of a violation on the Primary Dwelling Unit as a condition of an Accessory Dwelling Unit or Junior Accessory Dwelling Unit permit approval, provided that correcting the violation is not necessary to protect health and safety.

17.55.180 Building Code.

Applications for Accessory Dwelling Units and Junior Accessory Dwelling Units shall be subject to all applicable state laws, including the California Building Code, and the regulations below.

The Accessory Dwelling Unit and/or Junior Accessory Dwelling Unit shall:

1. Be placed on a permanent foundation;

2. Provide side and rear setbacks are sufficient for fire and safety; and

3. Comply with the requirements of Government Code Section 65852.2.

17.55.190 Junior Accessory Dwelling Unit Relative to Fire or Live Protection Ordinance.

A Junior Accessory Dwelling Unit shall not be considered a separate or new unit for purposes of any fire or life protection ordinance or for purposes of providing water, wastewater or power services. Primary Dwelling Units containing a Junior Accessory Dwelling Unit may be subject to the same such requirements as applied to Primary Dwelling Units not containing a Junior Accessory Dwelling Unit.

17.55.200 Severability.

To the extent possible, this section shall be interpreted to be consistent with the provisions of Government Code Sections 65852.2 and 65852.22. If any part of this section is found to be invalid or inconsistent with Government Code Sections 65852.2 and 65852.22, such provision shall be null and void and the remaining sections will still be applied to the maximum extent feasible.

17.60.100 Term limits for grants of reasonable accommodation.

Where the request for reasonable accommodation involves conversion of a garage to living space, variance from the requirements of this chapter for an ~~secondary~~ Accessory Dwelling ~~u~~Unit, or use of a recreational vehicle in a required setback, the request shall include a specific time limit and shall be made contingent on a specific person's actual need for the accommodation.

At the expiration of this period the applicant shall notify the planning director if the need continues. The planning director may extend the term for a period for a specific time limit after following the process described above in Sections 17.60.050 through 17.60.090. If the applicant does not notify the planning director at or before the expiration, or if the planning director does not extend the term, the premises shall be returned to the condition prior to the accommodation. Any violation to the granted term limits shall follow procedures per Chapter 17.59, Abatement of Procedures, of the county zoning ordinance.

Where the request is for any other purpose, including but not limited to encroachment of a ramp or elevator housing into a required setback or construction or placement of accessory structures for medical or other necessary equipment there shall be no time limit on the accommodation.

Nothing in this section shall preclude rescission of the grant of reasonable accommodation as indicated in Section 17.60.110.