



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

TO: Fairview Municipal Advisory Council

HEARING DATE: December 05, 2023

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 recommendation to the Fairview Municipal Advisory Council is to recommend approval to the Planning Commission of the proposed Ordinance amendments related to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs).

BACKGROUND

The new California ADU law, AB 221, was signed by Governor Newsom on September 28, 2022, and went into effect on January 1, 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.

STAFF ANALYSIS

The changes brought about by AB 221 include:

Redefining height restrictions – AB 221 requires all cities and counties 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 and counties 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 221 requires cities and counties 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 221. If an ADU is under 800 sq ft, front setback requirements now cannot prevent an ADU from being built.

Multi-family housing – AB 221 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 221 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.

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.

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 Planning Commission on January 16, 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 2024.

Schedule for February 2024 Board of Supervisors adoption:

- Fairview MAC Tuesday, December 05, 2023
- Castro Valley MAC Monday, December 11, 2023
- Sunol CAC Wednesday, December 20, 2023
- Eden MAC Tuesday, January 09, 2024
- Planning Commission Tuesday, January 16, 2024

ATTACHMENTS:

Exhibit A: California Government Code Section 65852.2

Exhibit B: 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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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.

“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 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. 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).

“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.

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 and neighborhoods.

17.55.XXX 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 a 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.XXX 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.XXX 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, with policies in place to review and approve larger projects.

17.55.XXX 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.XXX 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.XXX Development Standards for Accessory Dwelling Units.

1. Required yards (setbacks):
 - a. 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 and street side: Minimum is the same as for Primary Dwelling Unit. For Accessory Dwelling Units measuring less than 800 sq. ft. in area, front and/or street side setback can be occupied if there is no other legal physical location on the property to accommodate a building footprint.
2. Distance Separation: Six-foot separation minimum from any other building.
3. Height:
 - a. If detached and not meeting setbacks for Primary dwelling unit: Maximum 16 feet in building height, or up to 18 feet if:
 - i. 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; or
 - ii. to accommodate a roof pitch on the Accessory Dwelling Unit that is aligned with the roof pitch of the Primary dwelling unit.
 - b. If meeting required yards (either detached from or attached to a Primary dwelling unit), then may apply the lesser of 25 feet or the height limit for the 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.
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.

17.55.XXX 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 Accessory Dwelling Unit is to contain 0 or 1 bedrooms, then limited to 850 sq. ft. maximum.
 - ii. If the Accessory Dwelling Unit is to contain 2 or more bedrooms, then limited to 1,200 sq. ft. maximum.
 - iii. If the property contains an attached Accessory Dwelling Unit, then limited to 800 sq. ft. maximum.
- 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.

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.XXX 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.XXX Construction Phasing.

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.

17.55.XXX 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.XXX 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.XXX 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 Government Code Section 65852.26, as that section may be amended.
 - 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.XXX 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;
 - 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.XXX 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.XXX Nonconforming Facilities.

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.

17.55.XXX 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.XXX Junior Accessory Dwelling Unit Relative to Fire or Life 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. Single-family dwellings containing a Junior Accessory Dwelling Unit may be subject to the same such requirements as applied to Single-family dwellings not containing a Junior Accessory Dwelling Unit.

17.55.XXX 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.