

Raymond L. Sandelman  
ATTORNEY AT LAW

196 Cohasset Road, Suite 225  
Chico, California 95926-2284

Telephone: (530) 343-5090  
Fax: (530) 343-5091  
Raymond@sandelmanlaw.com

June 19, 2017

Glenn County Planning Commission  
777 N. Colusa Street  
Willows, CA 95988

Re: Administrative Permit 2017-003 Appeal  
Hearing Date: June 21, 2017

Greetings:

I am counsel for Leonard and Roberta Krup who have appealed the issuance of a permit for a 1,620 square foot manufactured home to be installed at property commonly known as Glenn County Assessor's Parcel No. 005-020-001. I was unable to appear at the hearing on May 17, 2017 because of conflict with a Court hearing. Mr. Krup handed out materials concerning Government Code section 65852.2 and the matter was continued to permit Glenn County Counsel's office to review the law. Following that hearing, I made a call to County Counsel's office to discuss this issue and was told that outside counsel would be retained. I asked that the attorney that was to be hired contact me to discuss this matter. When I received no call back after a few weeks, I telephoned County counsel's office again and was told that another effort would be made to have the outside counsel (who was not identified) telephone me. I still received no call from the counsel or even the name of the attorney who was retained. Last week I received an email with the agenda for the June 21, 2017 meeting and noticed that it includes a June 7, 2017 memorandum from Gregory Einhorn. This letter explains that (1) Mr. Einhorn's memorandum has not discussed the main legal issue that Glenn County Code section 15.360.040, adopted in 2006, is null and void, and (2) Government Code section 65852.2, the California Department of Housing and Community Development, and other local public entities, have articulated that *if* a local public entity adopts an ordinance dealing with accessory dwelling units after January 1, 2017, the maximum square footage of the accessory dwelling unit cannot exceed 1,200 square feet. Here is my explanation as to why Mr. Einhorn's analysis is totally devoid of all legal merit, and should be rejected by the Glenn County Planning Commission.

**1. All Glenn County Ordinances Adopted Prior To January 1, 2017 Relating to Accessory Dwelling Units, Are Null and Void**

The statutory basis for the “null and void” determination is Government Code section 65852.2 (a) which provides in part that:

(4) 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 subsequent to the effective date of the act adding this paragraph 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. **In the event that 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 upon the effective date of the act** adding this paragraph 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. (Bold added)

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

(7) 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.

Mr. Einhorn’s memorandum completely ignores the “null and void” analysis. The California Department of Housing and Community Development and other local public entities *begin* their analysis with the “null and void” provision of the statute, because the statute clearly repeals all prior local ordinances on the subject of accessory dwelling units, establishes default provisions for local public entities, and sets restrictions on what local public entities can adopt after January 1, 2017. The California Department of Housing and Community Development Accessory Dwelling Unit Memorandum published in December 2016, provided to the planning commission by Mr. Krup, is a thorough, plain English explanation of the statute. The Memorandum states at Page 8:

Are Existing Ordinances Null and Void?

Yes, any local ordinance adopted prior to January 1, 2017 that is not in compliance with the changes to ADU law will be null and void. Until an ordinance is adopted, local governments must apply “state standards” (See Attachment 4 for State Standard checklist). In the absence of a local ordinance complying with ADU law, local review must be limited to “state standards” and cannot include additional requirements such as those in an existing ordinance.

At the hearing on May 17, 2017, Mr. Krup provided copies of a memorandum from the Alameda County Community Development Agency Planning Department that is available on line. This document has the same “null and void” analysis that Mr. Einhorn has ignored.

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

I am also attaching a copy of the City of Walnut Creek urgency ordinance explaining that existing local ordinances are null and void. That document provides in part at Page 1 that:

d. California Government Code Section 65852.2(a)(4), as amended, provides that any existing local ADU ordinance failing to meet the requirements of the new state law shall be null and void unless and until the local agency adopts a new ordinance complying with California Government Code Section 65852.2. In the absence of a valid local ordinance, the new state law instead provides a set of default standards governing local agencies' regulation and approval of ADUs.

I am also attaching a copy of the City of Arcadia Planning Commission Staff Report which explains that existing local ordinances are null and void. That document provides in part at Page 1 that:

Governor Brown approved Assembly Bill 2299 (AB 2299) and Senate Bill 1069 (SB 1069) on September 27, 2016, and the legislation became effective on January 1, 2017 – refer to Attachment No. 2. The two bills amended various sections of the California Government Code related to Accessory Dwelling Units (ADUs) and modified the ability of cities and counties to regulate ADUs. The new law requires all local agencies to adopt a new or revised ADU ordinance and send the revised ordinance to the California Department of Housing and Community Development (HCD) within 60 days of adoption. If a local agency does not adopt or revise an existing ordinance that complies with the newly enacted legislation, the local agency's existing regulations become null and void, and the local agency is required to apply the State standards until a conforming ordinance is adopted. . .<sup>1</sup>

I am also attaching a copy of the City of Los Angeles November 17, 2016 Accessory Dwelling Unit Ordinance Background & Frequently Asked Questions which explains that existing local ordinances are null and void. That document provides in part at Page 1 that:

On September 27th, 2016, Governor Brown signed two accessory dwelling unit bills into State law, Assembly Bill (AB) 2299 and Senate Bill (SB) 1069 that amended the State's existing second unit law (Government Code Section 65852.2). These amendments to the existing second unit law go into effect on January 1, 2017.

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<sup>1</sup> This analysis picks upon on the statutory requirement in Government Code section 65852.2 subdivision (h) that local agencies need to submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption, something that is believed to have not been done by the County of Glenn.

The new version of State law makes clear that City ordinances which do not align with State law shall be “null and void” and that, until which time a jurisdiction adopts its own ordinance, in accordance with State law, the state standards specified in section 65852.2 shall be enforced. . .

I am also attaching a copy of the County of Santa Barbara Accessory Dwelling Unit Status Report dated April 26, 2017 which explains that existing local ordinances are null and void. That document provides in part at Page 3 that:

Effective January 1, 2017, outside the Coastal Zone, existing local ordinances that are inconsistent with Section 65852.2 as revised are null and void.

The analysis by the County of Santa Barbara gets to the heart of the matter with a minimum of verbiage. Further information regarding the “null and void” status of all California ordinances adopted prior to January 1, 2017 is easily obtainable by a Google search of “65852.2 null void.” This is not something complicated or controversial. It is a simple exercise by the legislature of preemption. Not discussing a preempted statute does not make the preemption go away.

My research indicates that with respect to legal materials that have been posted on line or which are available on the Westlaw data base, no one in the State of California has claimed that that existing local ordinances adopted prior to January 1, 2017 are not null and void. Instead of addressing the issue and reaching the same conclusions as the State of California and all other local public entities who have published anything on this issue. I reached out to County Counsel’s office as described above to discuss this issue with outside counsel retained by the County. I have no idea why Mr. Einhorn chose to ignore this legal principle. Once the “null and void” principle is appreciated, the controversy regarding the permit for 1,620 square foot accessory dwelling unit essentially is over because units greater than 1,200 square feet are not allowed, under any circumstances in the State of California.

I would guess that Mr. Leveroni of Executive Homes, who made the application, would be well aware of the substance of the statute because of his business. There are good points and not so good points for sellers of manufactured homes. A good point for the sellers is that the issuance of a permit for a unit under 1,200 square feet is a lot easier than it used to be. The bad news is that it is impossible to get an accessory dwelling unit permit for a manufactured home that is larger than 1,200 square feet. (See the next section of this letter).

I am urging you to ignore unsound legal advice provided to you by Mr. Einhorn. Much time and money is being wasted because of his failure to address the “null and void” provision of Government Code section 65852.2. Sooner or later the County should recognize that the State of California has clearly legislated that all Glenn County Ordinances adopted prior to January 1, 2017 relating to accessory dwelling units, are null and void. I urge you to take ten minutes and telephone the California Department of Housing and Community Development to verify the statement set forth in this letter.

**2. Glenn County Code section 15.360.040 Does Not Comply With Government Code Section 65852.2.**

Mr. Einhorn's memorandum discussing the null and void Glenn County Code section 15.360.040 and Government Code section 65852.2, reaches a conclusion that is contrary to the plan language of the state statute as interpreted by the State of California and all other local public entities who have published anything on this issue. The state statute has detailed requirements for post January 1, 2017 local ordinances that are adopted regarding accessory dwelling units. Mr. Einhorn's failure to review the specific terms of the state statute allows him to make an incorrect conclusion regarding the size of dwellings that are permitted. Government Code section 65852.2 provides in part that:

(a)(1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in single-family and multifamily residential zones. The ordinance **shall** do all of the following: (Bold added)

(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 criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B)(i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, 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 Historic Places.

(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: (Bold added)

(i) The unit is not intended for sale separate from the primary residence and may be rented.

(ii) The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.

(iii) The accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(iv) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(v) **The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.** (Bold added)

(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 garage that is converted to an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(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 unit or per bedroom. These spaces may be provided as tandem parking on an existing 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, or that it is not permitted anywhere else in the jurisdiction.

(III) This clause shall not apply to a 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, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

Government Code Section 65852.2 subdivisions (a)(i) and (a)(D)(v) have mandatory language (“shall” and “require”) regarding the substantive term “The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.” A local public entity may adopt an ordinance that has a *smaller* size of an accessory dwelling unit. Government Code Section 65852.2 subdivision (a)(B)(i) permissibly permits the local agency to impose standards on accessory dwelling units that include, but are not limited to, . . . maximum size of a unit. . .”

A layperson might be confused by the mandatory maximum size and a permissive maximum size of less than 1,200 square feet. The State of California and other local public entities have articulated how these provisions are harmonized into a maximum size of less than 1,200 square feet. The California Department of Housing and Community Development Accessory Dwelling Unit Memorandum December 2016, addresses this issue at Page 9:

Can Local Governments Establish Minimum and Maximum Unit Sizes?

Yes, a local government may establish minimum and maximum unit sizes (GC Section 65852.2(c)). However, like all development standards (e.g. height, lot coverage, lot size), unit sizes should not burden the development of ADUs. For example, setting forth a minimum unit size that substantially increases costs or a maximum unit size that unreasonable restricts opportunities would inconsistent

with the intent of the statute. Typical maximum unit sizes range from 800 square feet to 1,200 square feet. . . .

ADU law requires local government approval if meeting various requirements (GC Section 65852.2(a)(1)(D)), including unit size requirement. Specifically, attached ADUs shall not exceed 50 percent of the existing living area or 1,200 square feet and detached ADUs shall not exceed 1,200 square feet. **A local government may choose a maximum unit size less than 1,200 square feet** as long as the requirement is not burdensome on the creation of ADUs. (Bold added)

The City of Los Angeles November 17, 2016 Accessory Dwelling Unit Ordinance Background & Frequently Asked Questions explains that 1,200 square feet is the maximum size of any unit under a post January 1, 2017 ordinance. That document provides in part at Page 3 that:

FREQUENTLY ASKED QUESTIONS What are the state standards that the City must include in its own ordinance? The state's standards include a limitation on the size of an ADU. ADUs that are attached to an existing single family dwelling cannot be larger than 50% of the existing living areas. **Both attached and detached ADUs cannot exceed 1,200 square feet. . .**

The City of Arcadia Planning Commission Staff Report also explains that local ordinances cannot provide that accessory dwelling units may not exceed 1,200 square feet. That document provides in part at Page 3 and 4 that:

#### Proposed Amendments

##### Unit Size

The size and scale of ADUs can have a significant impact on neighborhood character. An out of scale ADU could negatively affect the neighborhood character, and the privacy of neighbors. **The new State law permits local jurisdictions to regulate the size of newly constructed ADUs, as long as they permit at least a 150 square foot efficiency unit, and allow a maximum size of up to 1,200 square feet.** The State Department of Housing and Community Development suggests that an appropriate maximum size for ADUs falls within the range of 800 to 1,200 square feet. . . (Bold added)

Mr. Einhorn's memorandum attempts to stand the law on its head. His memorandum states:

Government Code section 65852.2(a)(1)(D)(v) provides that a local agency **may** "[r]equire [that the] total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet." This provision sets the upper limit as to what a local agency may impose upon the floorspace of a detached ADU. This provision does not prohibit a local agency from permitting detached ADUs greater than 1200 square feet in floorspace. (Bold added)

Mr. Einhorn has misrepresented the statute's language. While it is true that a local public entity may adopt an ordinance, if it adopts an ordinance, there are mandatory terms (hence the word "shall"), one of which is the maximum square footage of 1,200 square feet. I believe that it is accurate to state that Mr. Einhorn seems to be the only person who thinks that "1,200 square feet is therefore the most restrictive floorspace limit a local agency may impose on a detached ADU." (Mr. Einhorn's memorandum at Page 2). The state statute, the State of California and the other local public entities, read the language exactly opposite to Mr. Einhorn. Please telephone the California Department of Housing and Community Development to verify the maximum square footage requirement both under the default provisions (applicable here because the current Glenn County ordinances are null and void) and possible local ordinance terms that are allowed under Government Code section 65852.2. A tremendous amount of time is being wasted because of a failure to understand the explanation of the law set forth in State's handbook.

The last page of Mr. Einhorn's memorandum correctly notes that Glenn County Code section 15.360.040 does not impose a maximum total area floorspace. At footnote 2 of his memorandum, he claims that this does not mean that the default limit of 1,200 square feet should be used because that interpretation "would disregard the intent of the amendments to that section." No explanation is given for this inaccurate analysis as to intent. Not only does the statute expressly state that the maximum square footage is 1,200, but the State of California and the other local public entities have articulated this maximum as being the rule throughout the state of California. As discussed above, Government Code section 65852.2 allows local public entities to establish a maximum square footage under 1,200. The failure of a local public entity to establish a maximum square footage under 1,200 (the current null and void Glenn County ordinance) cannot under any logic, be construed as an ordinance that establishes a maximum square footage of more than 1,200. If a local ordinance does not comply with the provisions of all of the provisions of subdivision (a)(1)(D), then subdivision (b) is applicable and all of the default state standards (including the maximum 1,200 square foot provision) become applicable.

### **3. Conclusion**

Read and review the California Department of Housing and Community Development Accessory Dwelling Unit Memorandum published in December 2016; it is complete, informative, articulated in plain English, free, and accurate. Call the California Department of Housing and Community Development and confirm that its analysis remains unchanged after seven months. You did the right thing to engage counsel to advise you, but you need to get some advice from someone who knows the law. No local public entity in the State of California is approving accessory dwelling units larger than 1,200 square foot because Government Code section 65852.2. This is not an issue where the planning commission has any discretion.

Because all Glenn County ordinances adopted prior to January 1, 2017 relating to accessory dwelling units are null and void, the permit issued for a 1,620 square foot manufactured home to be installed at property commonly known as Glenn County Assessor's Parcel No. 005-020-001, violates Government Code section 65852.2 and the illegal permit should be rescinded and cancelled.

*Glenn County Planning Commission  
Re: Administrative Permit 2017-003 Appeal  
June 19, 2017  
Page 9*

Very truly yours,

A handwritten signature in blue ink that reads "RLS Sandelman". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Raymond L. Sandelman

cc: Greg Einhorn via email  
Alicia Ekland via email [ekland@countyofglenn.net](mailto:ekland@countyofglenn.net)  
Bill Leveroni via email [bill@executivehomeschico.com](mailto:bill@executivehomeschico.com)  
Patrick and Mary Otterson via first class mail

RLS/awr

**CITY OF WALNUT CREEK  
ORDINANCE NO.**

Attachment 1

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WALNUT CREEK  
AMENDING TITLE 10 (PLANNING AND ZONING) OF THE WALNUT CREEK MUNICIPAL  
CODE PERTAINING TO THE REGULATION OF ACCESSORY DWELLING UNITS**

The City Council of the City of Walnut Creek does ordain as follows:

Section 1. Findings.

- a. A severe housing crisis exists in the state with the demand for housing outstripping supply.
- b. Accessory dwelling units (ADUs) provide housing opportunities in a manner that can be largely compatible with existing neighborhood development.
- c. On September 27, 2016, Governor Brown signed into law a pair of bills which are intended to increase the state's supply of affordable housing by facilitating the construction of ADUs (California Assembly Bill 2299 and California Senate Bill 1069). The new state law amends California Government Code Section 65852.2 and, among other limitations on local authority, requires cities, counties, and utility districts to further relax their regulation of ADUs by facilitating the conversion of existing buildings into ADUs without regard to setbacks; reducing, and in some cases removing altogether, the parking requirements for ADUs; and generally prohibiting the requirement for a separate utility connection for the ADU, or imposing a related connection fee or capacity charge. These amendments to California Government Code Section 65852.2 became effective January 1, 2017.
- d. California Government Code Section 65852.2(a)(4), as amended, provides that any existing local ADU ordinance failing to meet the requirements of the new state law shall be null and void unless and until the local agency adopts a new ordinance complying with California Government Code Section 65852.2. In the absence of a valid local ordinance, the new state law instead provides a set of default standards governing local agencies' regulation and approval of ADUs.
- e. The default standards contained in the new state law provide no protections for steep hillside areas (including high risk areas), or for rock outcroppings or prominent ridgelines which visually define the City's public open spaces.
- f. The default standards contained in the new state law allow attached ADUs as large as 50% of the existing living area (up to a maximum of 1,200 sq. ft. in floor area for both attached and detached ADUs), a size inconsistent with the single-family nature of many of the City's neighborhoods and the goals and policies of the City's General Plan, and a size so large that it may limit the affordability of ADUs to low and moderate-income households.
- g. The default standards contained in the new state law would allow the construction of large new ADUs on properties which already exceed the thresholds of the City's Oversized Home Ordinance.
- h. The default standards contained in the new state law include none of the design standards contained in the Walnut Creek Zoning Ordinance which require that the ADU be designed to be architecturally consistent with the principle structure.
- i. The City receives multiple public inquiries on a daily basis from architects, developers, contractors, and homeowners regarding ADUs and the new state law, underscoring the need

for the City to update its regulatory scheme to bring it into compliance with the requirements of California Government Code Section 65852.2 which became effective January 1, 2017.

- j. On January 10, 2017, the City Council considered the following amendments to the Walnut Creek Zoning Ordinance for the purpose of amending its local regulatory scheme pertaining to ADUs in a manner that complies with the new state law and is consistent with California Government Code Section 65852.2, as amended.
- k. California Government Code Section 65858 authorizes a city to adopt an interim urgency measure by a four-fifths (4/5ths) vote where necessary to protect the public health, safety, and welfare without following the procedures otherwise required prior to adoption of a zoning ordinance.
- l. Any interim urgency measure adopted pursuant to Government Code Section 65858 shall be of no further force and effect forty-five (45) days from its date of adoption unless extended by the legislative body. During such time period, City staff intends to undertake further study and present its recommendations to the City Council regarding permanent revisions to the City’s regulatory scheme pertaining to ADUs and consistent with the goals and policies of the City’s General Plan, California Planning and Zoning Law, and the provisions of California Government Code Section 65858.

Section 2. CEQA Exemption.

The proposed amendments are statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15282(h) of the CEQA Guidelines (the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code).

Section 3. Second Family Residential Unit changed to Accessory Dwelling Unit

Title 10, Chapter 2 of the Walnut Creek Municipal Code is hereby amended to replace all instances of the terms “Second Family Unit” and “Second Family Residential Unit” with the term “Accessory Dwelling Unit”, and to replace all instances of the terms “Second Family Units” and “Second Family Residential Units” with the term “Accessory Dwelling Units”.

Section 4. Amending Parking Requirements for Accessory Dwelling Units

Rows A(7) and A(8) of Table A contained in Section 10-2.3.206 of the Walnut Creek Municipal Code are hereby amended and restated to read as follows:

LAND USE CLASSIFICATION	OFF STREET PARKING REQUIREMENTS	NOTES	LOADING SPACES REQUIRED (SEE TABLE B)
7. Accessory Dwelling Unit	One space more than required for Single Family Residential (uncovered). Notwithstanding the foregoing, no additional parking is required in any of the following situations: 1. The Accessory Dwelling Unit is contained entirely within the footprint of an existing building. 2. The Accessory Dwelling Unit is located on a parcel	(6)	

	<p>which is within ½ mile from the closest point of the Walnut Creek or Pleasant Hill BART station property; or within ½ mile from a public bus stop. This distance shall be measured along street frontages using the most reasonably direct, legally permissible path. The determination of which developments meet this requirement shall rest with the City’s Transportation Planning Manager.</p> <p>3. The Accessory Dwelling Unit is located within one block of a car share vehicle station.</p>		
<p>8. Single Family Residential</p>	<p>2 covered per dwelling unit. Notwithstanding the foregoing, if the required parking is converted to an Accessory Dwelling Unit, then the parking may be replaced by either covered or uncovered parking spaces located anywhere on the lot, including through the use of tandem spaces.</p>	<p>(4)</p>	

Section 5. Accessory Dwelling Unit Regulations

Title 10, Chapter 2, Part III, Article 5 of the Walnut Creek Municipal Code is hereby amended and restated to read as follows:

**Article 5. Accessory Dwelling Units**

***Sec. 10-2.3.501. Purpose.***

The Accessory Dwelling Units article of the Zoning Chapter authorizes, upon issuance of an Accessory Dwelling Unit Permit, the establishment of accessory dwelling units accessory to detached single family homes. The purpose of allowing accessory dwelling units on single family properties in all single family residential and multiple family residential zones is to provide the opportunity for the development of small rental housing units designed to meet the special housing needs of individuals and families, particularly those of low and moderate income. Furthermore, it is the purpose of this section to allow the more efficient use of the City's existing stock of dwellings, to provide economic support for resident families of limited income, to provide rental housing units for persons who are elderly or disabled, while protecting property values and the integrity and character of single family neighborhoods by ensuring that accessory dwelling units are architecturally compatible with the principle structure and neighborhood and are installed under such additional conditions as may be appropriate to further the purpose of this ordinance.

***Sec. 10-2.3.502. Location.***

Notwithstanding any other provisions of the Walnut Creek Municipal Code, accessory dwelling units shall be allowed with existing single family dwellings in Single Family Residential Districts (R), single family residential areas zoned Planned Development (P-D, SFH-PD1), Hillside Planned Development Districts (H-P-D), Duplex Residential District (D-3) and Multiple Family Residential Districts (M, PD), after the necessary approval is obtained under this article, except that:

A. Accessory dwelling units shall not be allowed where water supplies for fire protection and other public utility service is not adequate. In the absence of other evidence, water supplies for fire protection and other public utility service shall be deemed adequate when notice of the proposed accessory dwelling unit has been sent to the affected utility and fire protection agencies and no response has been received within ten days of such notice.

**Sec. 10-2.3.503. Property Development Standards.**

The following property development standards shall apply to all land and structures in the zones which permit accessory dwelling units:

A. **Zoning Requirements.** All yards, building height, distance between buildings, and lot coverage standards of the zone in which the property proposed for conversion is located shall apply, except as otherwise specified in this Article. In P-D and H-P-D zones where no standards are specified, and where additional building is allowed, the Planning Manager shall apply development standards based on the district that most closely matches existing development in regards to lot size.

Notwithstanding the foregoing, no yards are required for an existing building when it is converted to an accessory dwelling unit, however the accessory dwelling unit must still comply with all applicable provisions of Title 9 of this Code (Building Regulations).

B. **Size.** No accessory dwelling unit may have a gross floor area of conditioned space in excess of 700 square feet. Furthermore, accessory dwelling units attached to the main unit shall not exceed 50 percent of the living area of the main unit (the existing interior habitable area of the main unit, including basements and attics but not including a garage or any accessory structure).

C. **Design.** The accessory dwelling unit shall be designed to be architecturally consistent with the principle structure, including form, exterior siding and/or trim, roof materials and window placement/type. Any new entrances to an attached accessory dwelling unit shall be located on the side or in the rear of the building.

D. **Off-Street Parking.** See Part III, **Article 2. Offstreet Parking and Loading Regulations.**

E. **Limitations for All Accessory Dwelling Units.** The following limitations shall apply to both conversion of existing structures and to construction of new structures.

1. On any one parcel of land, no more than one accessory dwelling unit shall be allowed.
2. **Tenancy.** In single family areas zoned R, P-D, SFH-PD1 and H-P-D, no more than one dwelling unit on the parcel shall be rented or leased. A deed restriction, approved by the City Attorney, shall be recorded setting forth this tenancy requirement.
3. If the addition of the second family unit requires Design Review through the oversize home ordinance (Sec. 10-2.4.1203) or the Hillside Performance Standards (Sec. 10-2.3.401), then the Accessory Dwelling Unit Permit shall not be approved unless the accessory dwelling unit is located entirely within the footprint of an existing building.

F. **Limitations for Newly Constructed Accessory Dwelling Units.** The following limitations shall apply only to the construction of new structures.

1. Accessory dwelling units shall be attached to the main unit or in the same building as the main unit except if the accessory dwelling unit meets all the zoning development standards of the primary unit and either:

- a) The accessory dwelling unit is one-story with a maximum height of eighteen feet to the highest part of the structure; or
- b) The accessory dwelling unit is a second story above an accessory structure other than a detached garage, providing the second story is setback a minimum of 10 feet from the side property line; or
- c) The accessory dwelling unit is a second story above a detached garage, providing the second story is setback a minimum of 5 feet from the side property line, or that which is required for a single family dwelling, whichever is less.

***Sec. 10-2.3.504. Accessory Dwelling Unit Permits.***

An Accessory Dwelling Unit Permit must be obtained before an accessory dwelling unit can become a legal, conforming use. Accessory dwelling units constructed without a permit prior to adoption of this section must obtain an Accessory Dwelling Unit Permit to be considered a legal, conforming use. Notwithstanding other provisions of the law, units that receive an Accessory Dwelling Unit Permit under this article shall be deemed apartments for the purpose of meeting the requirements of the Subdivision Map Act.

In order to encourage the development of housing units for disabled individuals and persons with limited mobility, the Planning Manager may make a finding that reasonable deviation from the stated conditions is necessary to install features that facilitate access and mobility for disabled persons.

Accessory Dwelling Unit Permits will be considered upon application for a building permit. Section 10-2.4.201 and Section 10-2.4.202 regarding the need for written applications and applicable fees, shall apply to second family unit permits. Section 10-2.4.9 regarding the procedures for variances, shall not apply to second family unit permits. Accessory Dwelling Unit Permits shall be approved without a hearing if they meet the standards in this code. All interpretations by the Planning Manager shall be final.

***Sec. 10-2.3.505. Application.***

This article applies to any parcels of land on which (1) a principal structure has been constructed as a single family dwelling prior to the time of application for an accessory dwelling unit, or (2) a structure meeting the requirements for an accessory dwelling unit exists, and a new principal structure or addition is proposed, or (3) an accessory dwelling unit is proposed at the time of the original construction of the single family dwelling.

Section 6. Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

Section 7. Urgency Findings.

The City Council finds and determines pursuant to California Government Code Section 65858 that adoption of this ordinance is necessary for the immediate preservation of the public health, safety, and welfare, and to prohibit uses in conflict with zoning regulations pertaining to ADUs currently being studied and contemplated by the City.

Section 8. Effective Date.

This urgency ordinance shall be effective immediately upon its adoption. And shall expire forty-five (45) days following its adoption unless otherwise extended in compliance with California Government Code Section 65858.

Section 9. Publication.

No later than fifteen (15) days following the adoption of this ordinance, the ordinance, or a summary thereof, along with the names of the City Council members voting for and against the ordinance, shall be published in a newspaper of general circulation in the City of Walnut Creek.



# STAFF REPORT

Development Services Department

**DATE:** March 14, 2017

**TO:** Honorable Chairman and Planning Commission

**FROM:** Jim Kasama, Community Development Administrator  
By: Amanda Landry, AICP, Senior Planner

**SUBJECT:** TEXT AMENDMENTS NO. TA 17-02 AND NO. TA 17-03 WITH EXEMPTIONS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT TO AMEND VARIOUS SECTIONS OF THE DEVELOPMENT CODE PERTAINING TO ACCESSORY DWELLING UNITS, AND MINOR CLEANUPS TO VARIOUS SECTIONS OF THE DEVELOPMENT CODE  
**Recommendation: Adopt Resolution No. 1990 and Recommend Approval to the City Council**

## SUMMARY

Governor Brown approved Assembly Bill 2299 (AB 2299) and Senate Bill 1069 (SB 1069) on September 27, 2016, and the legislation became effective on January 1, 2017 – refer to Attachment No. 2. The two bills amended various sections of the California Government Code related to Accessory Dwelling Units (ADUs) and modified the ability of cities and counties to regulate ADUs. The new law requires all local agencies to adopt a new or revised ADU ordinance and send the revised ordinance to the California Department of Housing and Community Development (HCD) within 60 days of adoption. If a local agency does not adopt or revise an existing ordinance that complies with the newly enacted legislation, the local agency's existing regulations become null and void, and the local agency is required to apply the State standards until a conforming ordinance is adopted. Text Amendment No. TA 17-02 is proposed to amend the City's ADU regulations to comply with State law.

A second Text Amendment, No. TA 17-03 is proposed to address minor code cleanups needed to fix typographical errors and inconsistencies that have been noted in the course of implementing the updated Development Code that became effective in December 2016.

It is recommended that the Planning Commission adopt the attached Resolution No. 1990 (Attachment No. 1) to recommend approval of Text Amendments No. TA 17-02 and No. TA 17-03 to the City Council, based on the findings listed in this staff report, including that the Text Amendments are Exempt under the California Environmental Quality Act (CEQA), and direct staff to proceed with an ordinance and convey the Commission's comments to the City Council.

## **BACKGROUND**

Accessory Dwelling Units (ADUs), also known as second units, granny flats, in-law suites, or guest houses, are secondary homes on a property already containing an established primary dwelling. Such units are defined generally as independent, self-contained dwelling units with kitchen and bathroom facilities. The State of California and other housing advocacy groups see ADUs as an important affordable housing option.

California's second-unit law was first enacted in 1982 in California Government Code Section 65852.2, and was significantly amended in 2002 with AB 1866 to encourage the creation of second-units while maintaining local control and flexibility. The purpose of the State's new second-unit law is to provide for additional housing opportunities in an efficient, affordable, sustainable manner. The intent is to remove barriers, and ensure that local regulations are not, ". . . so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance." (California Department of Housing and Community Development Memorandum - December 2016).

The rising cost of housing and the lack of availability of a variety of affordable housing types have been extensively discussed by the State Legislature in recent years, with the shortage of affordable housing emerging as a critical issue. The purpose of the newly enacted legislation is to provide additional opportunities for affordable housing in California and further reduce barriers to development of ADUs. The existing ADU law includes several provisions that limit a local jurisdiction's ability to regulate many aspects of ADUs, and the new legislation further preempts local regulation.

The text of California Government Code Section 65852.2 with AB 2299 and SB 1069 incorporated is provided as Attachment No. 2. In general, the changes address parking, type and size of units, review and approval procedures, covenants, and utility requirements. Some of the more significant changes in the State law are as follows:

1. Parking standards for new ADUs are reduced to zero spaces under certain circumstances (e.g., within ½ mile of public transportation, located in an historic district, is part of an existing primary residence, or when a "car-share" vehicle is located within one block).
2. ADUs are exempt from any discretionary planning process if the ADU meets specified criteria.
3. An ADU may now be either attached to the existing primary residence, detached, or located within the living area of an existing primary residence.
4. So as not to pose as a barrier to the development of ADUs, the maximum size of ADUs should be from 800 to 1,200 square feet. The minimum size allowed must be a 150 square foot efficiency unit, which is a unit for occupancy by no more than two persons, and that may have a partial kitchen and/or bathroom facilities.

5. Existing accessory structures, including garages, when converted to an ADU, are permitted without additional restrictions and setbacks provided the structure has independent exterior access, and side and rear setbacks sufficient for safety purposes.
6. When a garage, carport or covered parking structure is converted or demolished in conjunction with the construction of an ADU, the replacement parking spaces for the main dwelling may be located in any configuration on the same lot as the ADU, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces on an existing driveway.
7. The parking requirement for an ADU is limited to not more than one space per ADU or per bedroom in the ADU, and the required parking is permitted to be tandem spaces in an existing driveway.
8. Any existing local ADU ordinance that fails to meet the requirements of the new State law is considered null and void, and the local agency must apply only the State standards.

## **DISCUSSION**

### **Accessory Dwelling Units**

Section 9102.01.080 of the Arcadia Development Code sets forth development standards for Accessory Dwelling Units (ADUs), including the types, location, height, parking requirements, and deed restrictions. These development standards are intended to ensure that ADUs are compatible with the existing dwellings, the surrounding neighborhoods, and are subordinate in use to the primary dwellings.

Although many of the current development standards are consistent with the new State law, some aspects do not fully comply, and must be amended in order for the City to retain the authority to regulate, to the extent possible, the development of new ADUs. If the development standards are not amended, under the new State law, the entire set of ADU development standards shall become null and void, and the City will only be able to apply the State requirements. Staff has prepared amended development standards that comply with the State law to allow the City to continue to ensure ADUs are compatible with the main dwellings, and the surrounding residential neighborhoods. The following summarizes the major changes to the development standards:

### **Proposed Amendments**

#### **Unit Size**

The size and scale of ADUs can have a significant impact on neighborhood character. An out of scale ADU could negatively affect the neighborhood character, and the privacy of neighbors. The new State law permits local jurisdictions to regulate the size of newly constructed ADUs, as long as they permit at least a 150 square foot efficiency unit, and allow a maximum size of up to 1,200 square feet. The State Department of

Housing and Community Development suggests that an appropriate maximum size for ADUs falls within the range of 800 to 1,200 square feet. Given past development trends in Arcadia, increasing the maximum size for ADUs from 600 square feet to 800 square feet is appropriate, and is in keeping with the permitted sizes of other accessory structures. In addition, to comply with State law, ADUs will now be permitted to be located within an existing residence, or attached to an existing residence. Detached ADUs will still be limited to 16 feet in height and one story. These development standards ensure ADUs will always be an accessory use to the main home.

### **Location and Character**

The location of a building on an individual property can significantly affect how it impacts neighboring properties and neighborhood character. AB 2299 reduces requirements across the State in three cases; when existing garage buildings are converted, when any other existing square footage is converted to an ADU, or when a second story is built on top of a garage that is a part of the main residence. In these cases, the State law requires that the existing setbacks be allowed to be maintained, except that the setbacks cannot be less than what is required by building and fire codes. The development standards have been revised to account for these circumstances.

ADUs must otherwise comply with all other provisions of the underlying zoning designation, except as explicitly specified by the State law. Standard regulations such as total residential floor area ratio, which limits total square footage in relation to lot size, building separation, number of accessory structures on a property, etcetera, must all be met. Most importantly, the City will still be able to review new structures for compatibility with established design guidelines, which are intended to ensure new construction is compatible with the surrounding context. In addition, the development standards also place limits on other accessory buildings on single-family properties that may not meet the definition of an ADU, such as pool houses, guest houses, and garages.

### **Covenant**

The current development standards require a covenant to be recorded for each accessory dwelling unit stating that the unit cannot be sold independently from the primary residence. The new State law permits this, and allows local agencies to also require that ADUs not be offered for lease agreements of less than 30 days and that the property is owner-occupied. The covenant requirements have been amended to reflect the minimum lease term and that the property owner must occupy either the primary dwelling, or the accessory dwelling unit.

### **Permit Processing**

Discretionary review is considered by the Legislature to be a barrier to the development of ADUs, and the State law requires that ADUs generally be permitted through a non-discretionary, ministerial process, and that certain ADUs meeting specific criteria be permitted by-right, with approval only through a building permit, with no other administrative review. The by-right requirement is intended to incentivize the development of ADUs that are fully contained within an existing structure and would

thereby have minimal impacts on the character of the surrounding neighborhood. The Development Code has been revised to comply with this requirement. However, under limited circumstances an ADU could still be denied for reasons pertaining to public health and safety requirements.

## **Parking**

The adequate provision of parking is important to maintaining neighborhood character. The current Development Code requires that one covered or uncovered parking space be provided for a detached ADU. However, the new law considers a covered parking requirement to be a barrier to development of ADUs and the State law mandates more flexible parking arrangements. The development standards have been revised to clarify that required parking may now be provided as an uncovered or covered parking space in a variety of configurations, including as a tandem space in an existing garage. However, replacement parking for the main dwelling is still required to comply with the Development Code if an existing garage is converted into an ADU. In compliance with State law, parking requirements for new ADUs have been reduced to zero spaces under specific circumstances; within ½ mile of public transportation, located in an historic district, is part of an existing primary residence, or when a “car-share” vehicle is located within one block. The rationale behind the elimination of required parking in these circumstances is that ADU parking is not necessary when alternative transportation is readily available.

## **Development Code Clean Up**

Through the course of the day-to-day implementation of the updated Development Code, which became effective in December of 2016, minor typographical errors and inconsistencies have been noted that require correcting. Text Amendment No. TA 17-03 has been prepared to address these errors and inconsistencies, and is included as Exhibit “B” of the attached Resolution No. 1990 (Attachment No. 1). This Text Amendment only addresses minor semantic changes and errors and inconsistencies, and does not revise or introduce substantive changes to the Development Code.

## **FINDINGS**

Pursuant to Section 9108.03.060, an amendment to the Development Code may be approved only if all of the following findings are made:

- 1. The proposed amendment is consistent with the General Plan and any applicable specific plan(s).**

**Facts to Support the Finding:** The proposed Text Amendment No. TA 17-02 is consistent with the General Plan Land Use Element and Housing Element goals and policies. Accessory Dwelling Units (ADUs) are land uses permitted in all residential land use designations. The Amendment ensures that the Development Code will comply with State law and that the City will retain the ability to regulate certain aspects of ADUs, such as height, location and design, to ensure

neighborhood compatibility, which is consistent with the following General Plan Policies:

#### Land Use and Community Development Element

- Policy LU-3: Preservation and enhancement of Arcadia's single-family neighborhoods, which are an essential part of the City's core identity.
- Policy LU-3.4: Strengthen neighborhood identity with new development that is compatible with surrounding structures through scale, massing, and preferred architectural style.
- Policy LU-3.5: Require that new construction, additions, renovations, and infill developments be sensitive to neighborhood context, building forms, scale, and colors. The proposed amendments also reduce barriers to the development of ADUs, which can contribute to the overall variety of available housing choices in Arcadia.

#### Housing Element

- Policy H-2.4: Maintain development standards, regulations, and design features that are flexible to provide a variety of housing types and facilitate housing that is appropriate for the neighborhoods in which they are located.
- Policy H-4.1: Periodically review and modify as appropriate residential and mixed use development standards, regulations, and processing procedures that are determined to constrain housing development, particularly housing for lower- and moderate-income households and for persons with special needs.
- Policy H-4.3: Provide for streamlined, timely, and coordinated processing of residential projects to minimize holding costs and encourage housing production.

The purpose of the proposed Text Amendment No. TA 17-03 is to address minor semantic changes, and correct minor typographical errors and inconsistencies in the Development Code. These amendments will not substantively affect any development standards, and are consistent with the adopted General Plan.

**2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.**

**Facts to Support the Finding:** Proposed Text Amendment No. TA 17-02 pertains to Accessory Dwelling Units (ADUs) and is intended to ensure that the City complies with State law and retains the ability, to the extent possible, to regulate the appropriate development of ADUs. Non-compliance with the State law would result in all of the City's development standards related to ADUs becoming null and void, and the City would only be able to apply the State requirements. By complying with

the State law, the City will be able to continue to ensure ADUs are compatible with the surrounding residential neighborhoods to the extent possible.

The purpose of proposed Text Amendment No. TA 17-03 is to address minor semantic changes, and correct minor typographical errors and inconsistencies in the Development Code, and will not substantively affect any development standard, and will not have any detrimental effects.

- 3. For Development Code amendments only, the proposed amendment is internally consistent with other applicable provisions of this Development Code.**

**Facts to Support the Finding:** The proposed Text Amendment pertaining to Accessory Dwelling Units (ADUs) has been reviewed to ensure it is consistent with the other applicable provisions of the Development Code, including parking and permit processing requirements. The proposed Amendment was reviewed by the City Attorney for internal consistency to ensure that there are no conflicting standards or uncertainties.

The purpose of the proposed Text Amendment to correct minor typographical errors and inconsistencies in the Development Code is to provide additional internal consistency and clarity to readers of the Development Code. The proposed Text Amendment is internally consistent with all other applicable provisions of the Development Code.

### **ENVIRONMENTAL ANALYSIS**

The proposed ADU Text Amendment is exempt from review under the California Environmental Quality Act (CEQA) pursuant to several CEQA exemption provisions, including CEQA Guidelines Section 15282(h), pertaining to the adoption of an ordinance regarding second units in a single-family or multifamily residential zone to implement the provisions of Section 65825.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code, and Section 15061(b)(3) which provides that, where it can be seen with certainty that there is no possibility that a project may have a significant effect on the environment, the project is not subject to CEQA. The proposed development standards are intended to offer protections from out-of-scale new development in single-family neighborhoods. Further, per Section 15303(a) of the CEQA Guidelines, in general, the development of second dwelling units is a Class 3 exemption from environmental review.

The proposed minor clean up to the Development Code is also exempt from review under CEQA pursuant to Section 15061(b)(3) which provides that, where it can be seen with certainty that there is no possibility that a project may have a significant effect on the environment, the project is not subject to CEQA. The proposed Text Amendment does not create or substantially alter any existing development standard. A Preliminary Exemption Assessment is included as Attachment No. 3.

## **PUBLIC NOTICE/COMMENTS**

Pursuant to Section 9108.13.020.B.2, if the number of property owners to whom notice would be mailed is more than 1,000, a notice may be published in a general circulation news publication. Accordingly, a public hearing notice for Text Amendments No. TA 17-02 and No. TA 17-03 was published in the Arcadia Weekly on March 2, 2017. As of March 9, 2017, no comments were received in response to the notice.

## **RECOMMENDATION**

It is recommended that the Planning Commission adopt the attached Resolution No. 1990 (Attachment No. 1) to recommend approval of Text Amendments No. TA 17-02 and No. TA 17-03 to the City Council, based on the findings listed in this staff report, including that the Text Amendments are Exempt under the California Environmental Quality Act (CEQA), and direct staff to proceed with an ordinance and convey the Commission's comments to the City Council.

If any Planning Commissioner, or other interested party has any questions or comments regarding this matter prior to the March 14, 2017, hearing, please contact Senior Planner, Amanda Landry at (626) 574-5447 or [alandry@ArcadiaCA.gov](mailto:alandry@ArcadiaCA.gov).

Approved:



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Jim Kasama  
Community Development Administrator

- Attachment No. 1: Resolution No. 1990
- Exhibit "A" - Various Amended Development Code Sections Pertaining to Accessory Dwelling Units
  - Exhibit "B" - Various Amended Development Code Sections to Address Minor Semantic Changes and Correct Typographical Errors
- Attachment No. 2: Government Code Section 65852.2, incorporating AB 2299 and SB 1069 - Accessory Dwelling Units
- Attachment No. 3: Preliminary Exemption Assessment

# ACCESSORY DWELLING UNIT

## ORDINANCE

### BACKGROUND & FREQUENTLY ASKED QUESTIONS – Nov. 17, 2016



#### SUMMARY

On September 27<sup>th</sup>, 2016, Governor Brown signed two accessory dwelling unit bills into State law, Assembly Bill (AB) 2299 and Senate Bill (SB) 1069 that amended the State's existing second unit law (Government Code Section 65852.2). These amendments to the existing second unit law go into effect on January 1, 2017. The new version of State law makes clear that City ordinances which do not align with State law shall be "null and void" and that, until which time a jurisdiction adopts its own ordinance, in accordance with State law, the state standards specified in section 65852.2 shall be enforced.

In response to these changes in State law the Department of City Planning has prepared a new ordinance which is expected to be heard by the City Planning Commission (CPC) on December 15, 2016. Due to the time frame imposed by the new State law the City is moving quickly to discuss this important topic.

In addition to following the regulations established in the City's new ordinance any future Accessory Dwelling Units (ADUs) would also need to conform to the parcel's zoning regulations including floor area, bulk and height. Floor area devoted to an ADU is counted against the total floor area permitted on a parcel. The Department of City Planning's new Baseline Mansionization (BMO) and Baseline Hillside Ordinances (BHO) are currently pending council review and will further regulate the size of ADUs.

#### BACKGROUND

Second units, now called accessory dwelling units (ADUs), have been identified by the State as providing an important housing option to both potential renters and homeowners. They typically cost less than other types of housing, provide convenient housing for family members, help ease a severe rental housing deficit, maximize limited land resources and existing infrastructure, and assist homeowners with supplemental income.

California's second-unit law was first enacted in 1982 to encourage the creation of second-units while maintaining local control and flexibility. In 2002, the State enacted AB 1866 that updated the second-unit law to require that local governments must allow second units on both single family lots and multi-family lots through a by-right process.

In 1985, the City adopted L.A.M.C. 12.23 W.43 and W.44 which permitted second units only in limited circumstances through a conditional use permit process. Due to the 2002 changes in State law the City prepared two memos, one in 2003 and a second one in 2010, that sought to align the City's practices with the state's by-right process. The City was recently challenged on the legality of the second of the two memos and in September of this year the City Council directed the City Planning Department to prepare a new Zoning Administrator Interpretation (ZAI) that would supersede the previous memos and provide a by-right pathway for ADUs that adhered to certain standards established in the original LAMC 12.23 W. 43 and W44 ordinance from 1985.

# ACCESSORY DWELLING UNIT

## ORDINANCE

### BACKGROUND & FREQUENTLY ASKED QUESTIONS – Nov. 17, 2016



In response to council request, ZAI 2016-4167 was published on November 2, 2016 and will be in effect until December 31, 2016 at which time the new State law will go into effect. Any new ordinance adopted by the City must be consistent with this new State law. Once the City adopts its own new ordinance the City's ordinance will be the prevailing local regulations for ADUs. In preparing its own ordinance the City, per State law, may modify certain state standards but must adhere to others.

#### KEY PROVISIONS OF ORDINANCE

Accessory Dwelling Units are:

- Not allowed in Hillside areas.
- Not allowed between the front of the primary residence and the street.
- Only allowed in zones that allow residential uses with an existing single-family residence.
- Limited to only one per lot.
- Limited in size, to 50% of the primary residence and up to a maximum of 1200 sq.ft.
- Required to meet all underlying zoning and land use regulations.

# ACCESSORY DWELLING UNIT

## ORDINANCE

### BACKGROUND & FREQUENTLY ASKED QUESTIONS – Nov. 17, 2016



#### FREQUENTLY ASKED QUESTIONS

##### **What are the state standards that the City must include in its own ordinance?**

The state's standards include a limitation on the size of an ADU. ADUs that are attached to an existing single family dwelling cannot be larger than 50% of the existing living areas. Both attached and detached ADUs cannot exceed 1,200 square feet. The State law stipulates that no passageway shall be required in conjunction with the construction of an ADU and that no setbacks shall be required for an existing garage that is converted to an ADU. An ADU that is constructed above a garage will need to provide no more than five feet from the side and rear lot lines. In addition, per state legislation, existing accessory structures, with side and rear setbacks sufficient for fire safety, and with their own exterior entrance shall be permitted to become ADUs.

##### **What are the state's parking requirements for an ADU?**

The state legislation limits the required parking for an ADU to one parking space per unit or per bedroom and permits the parking space to be a tandem space in an existing driveway. When a garage, carport or covered parking structure is demolished in conjunction with the construction of an ADU the replacement spaces may be located in any configuration on the same lot as the ADU, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts.

The state legislation further stipulates that parking cannot be required when the ADU is located: within ½ mile of public transportation; in an historic district; is part of an existing primary residence; or, when a car-share vehicle is located within one block.

##### **What additional limitations is the City considering?**

The City's ordinance proposes to exclude ADUs in Hillside areas. Furthermore, the ordinance would limit the square footage of a detached ADU to no more than 50% of the square footage of the existing single family home while allowing at least an ADU of 640 square feet but no more than 1,200 square feet. In addition, detached ADUs shall not be located between the primary dwelling unit and the street. Furthermore, the Baseline Mansionization Ordinance (BMO) and Baseline Hillside Ordinance (BHO), currently pending council review, will further regulate the size of ADUs.

##### **What additional standards can the City impose on ADUs?**

Perhaps most importantly, the state explicitly states that an ADU must also adhere to the local jurisdiction's standards with regards to height, setback, lot coverage, Floor Area Ratio (FAR), building separation and open space of the zone on which the property is located.

##### **How many ADU's have been built in the City?**

Since 2003 a total of 644 (as of March, 14, 2016) projects have pulled a permit to build an ADU but, to date, only 404 of those have received a certificate of occupancy.

##### **I see lots of second units in my neighborhood but the City claims that only 404 have been completed.**

It is estimated that many thousands of units have been illegally established by converting a garage or recreation room into a dwelling unit without proper permits. Such units are not legalized by the new ordinance and are subject to citation. However, some of these existing units may be eligible to pursue permits if they otherwise meet the requirements of the new ordinance and meet all building codes.

# ACCESSORY DWELLING UNIT

## ORDINANCE

BACKGROUND & FREQUENTLY ASKED QUESTIONS – Nov. 17, 2016



### Of the units that have been permitted and/or completed, where are they located?

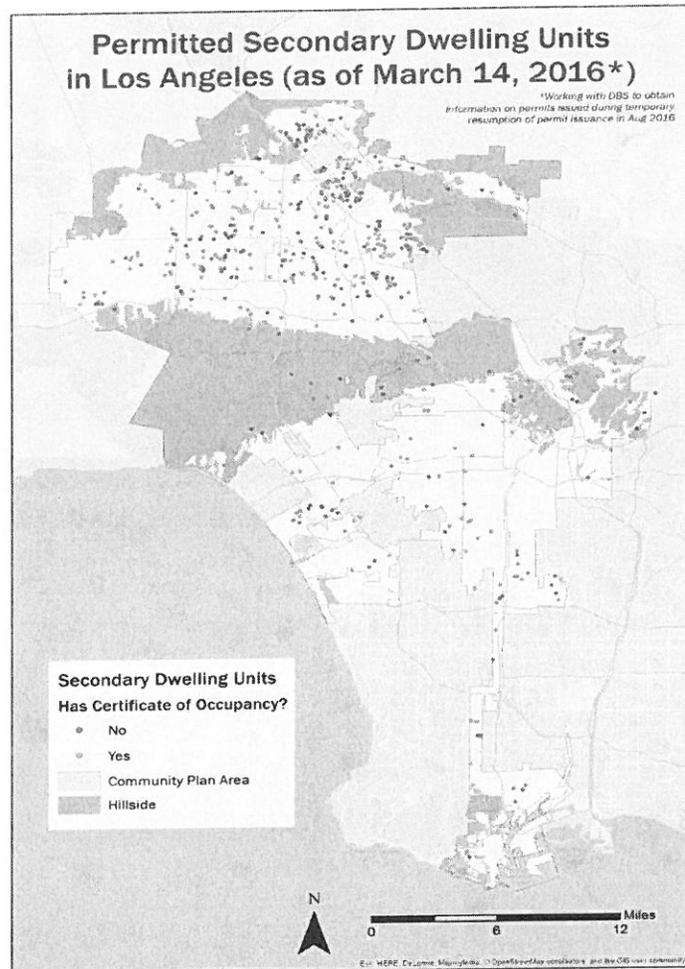
Most of the approved units have been located in the San Fernando Valley because the lots are typically larger there and the driveways and lots are configured such that an ADU can more easily be accommodated. A few units have also been legally built in South LA, Hollywood and West LA.

### How many ADUs have been built in the Hillside areas?

Due to the FAR, height, setback and other limitations that pertain to lots in the Hillside areas only a small handful of SDUs have been built in these areas. To date 13 ADUs have been completed and another 16 have been permitted but not completed for a total of 29 ADUs in the Hillside areas.

### How many single family zoned parcels are in the City of Los Angeles?

There are approximately 485,000 single family zoned parcels in the City. The 644 permitted ADU's represent 1/8<sup>th</sup> of 1% of the City's single family zoned parcels.



### If I have questions about the ADU Ordinance what can I do?

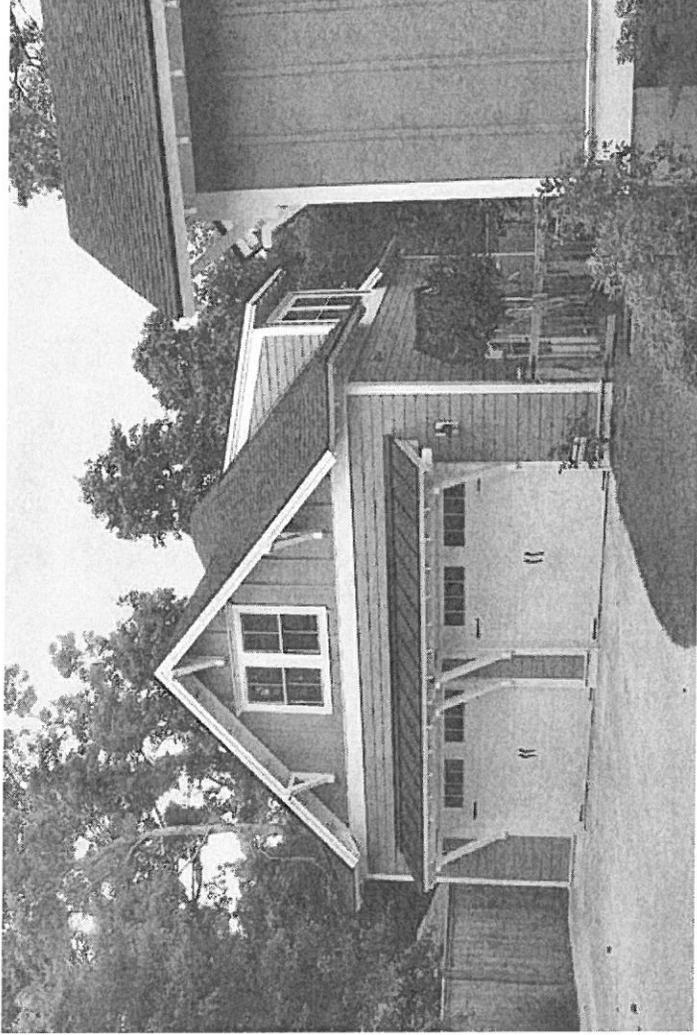
The ordinance will be considered by the City Planning Commission on December 15, 2016, which will include a public hearing and opportunity for public comment. The City Planning Commission's recommendation will be heard by City Council's Planning and Land Use Management (PLUM) committee at a date to be determined. Please email [matthew.glesne@lacity.org](mailto:matthew.glesne@lacity.org) to join our interested parties list and receive updates on the proposed Code Amendment. For more information, visit [planning.lacity.org](http://planning.lacity.org) and click "Ordinances," then "Proposed Ordinances." Questions or Comments on the Code amendment should be addressed directly to planning staff up until November 28<sup>th</sup> ([matthew.glesne@lacity.org](mailto:matthew.glesne@lacity.org) or (213)978-2666), or to the City Planning Commission after that date ([cpc@lacity.org](mailto:cpc@lacity.org)).



# Accessory Dwelling Unit Status Report

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April 26, 2017 County Planning Commission





## Background

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- AB 2299 and SB 1069 revised Government Code Section 65852.2 regarding the development of ADUs.
- Purpose of legislation - Streamline the process for owners to add an ADU by adding development standards that local jurisdictions must use in reviewing ADU applications.
- Primarily addresses ADUs that are:
  - Accessory to an existing principal residence, and
  - Located in a residential zone.



## Background

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- Effective January 1, 2017, outside the Coastal Zone, existing local ordinances that are inconsistent with Section 65852.2 as revised are null and void.
- Local jurisdictions may either:
  - Amend existing ordinances to be consistent with Section 65852.2, or
  - Not amend existing ordinances and instead simply approve applications for ADUs provided they are consistent with the requirements of Section 65852.2.

## Background



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- The Department is processing ordinances to amend the County and Montecito LUDCs to be consistent with Section 65852.2
- The proposed amendment to the Article II Coastal Zoning Ordinance:
  - Amends the existing standards so that they more closely align with Section 65852.2, and
  - Maintains coastal resource protection policies.

## Summary of State Law Requirements



- ADUs:
- Provide complete, independent living facilities (areas for cooking, sanitation, and sleeping).
- May be attached to the principal dwelling, or located in a separate, detached accessory structure.
- Are a residential use consistent with the existing land use and zoning designations, and do not exceed allowable densities.
- May not be considered in the application of any local residential growth management ordinance.

# Summary of State Law Requirements



- Section 65852.2:
  - Requires that ADU applications be reviewed ministerially and acted on within 120 of application submittal.
  - Restricts the scope of development standards that may be applied in reviewing an application for an ADU.
  - Development standards are different depending on whether the ADU is:
    - Developed entirely within existing structure, or
    - Includes new construction (e.g., an addition to an existing structure or a complete new structure).

## Summary of State Law Requirements



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- Section 65852.2 includes standards that address:
  - ADU floor area.
  - Parking requirements.
  - Setbacks.
  - Owner-occupancy requirements.
  - Minimum length of rentals.

## Summary of State Law Requirements



- Section 65852.2 prohibits local agencies that provide water and sewer service from requiring separate utility connections and connection fees for ADUs that would be constructed entirely within existing structures.
- Local agencies are defined as cities and counties so currently does not affect special districts.

## Montecito Planning Commission Review



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- Two public hearings (March 22<sup>nd</sup> and April 12<sup>th</sup>).
- Direction to return with ordinance amendments that address certain areas of concern.
- Next hearing: May 17<sup>th</sup>.
- Tentatively to County PC on June 7, 2017