



CITY OF POMONA COUNCIL REPORT

December 16, 2024

To: Honorable Mayor and Members of the City Council

From: Anita D. Scott, City Manager

Submitted By: Betty Donavanik, Development Services Director

SUBJECT: ADOPTION OF URGENCY ORDINANCE NO. 4353 AMENDING SECTION 830.A (ACCESSORY DWELLING UNITS) OF THE CITY OF POMONA ZONING AND DEVELOPMENT CODE PERTAINING TO ACCESSORY DWELLING UNIT AND JUNIOR ACCESSORY DWELLING UNIT REGULATIONS IN COMPLIANCE WITH STATE LAW AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA

RECOMMENDATION:

It is recommended that the City Council take the following action:

Introduce, waive further reading, and adopt the following:

- 1. URGENCY ORDINANCE NO. 4353 - AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, PURSUANT TO SECTION 510 OF THE CITY CHARTER, AMENDING SECTION 830.A (ACCESSORY DWELLING UNITS) OF THE CITY OF POMONA ZONING AND DEVELOPMENT CODE PERTAINING TO ACCESSORY DWELLING UNIT AND JUNIOR ACCESSORY DWELLING UNIT REGULATIONS IN COMPLIANCE WITH STATE LAW AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA**

EXECUTIVE SUMMARY:

The proposed Urgency Ordinance (Attachment No. 1) will amend the City of Pomona Zoning and Development Code (PZDC) for the purpose of regulating Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Unit (JADUs) in accordance with new State law effective January 1, 2025 (AB 2533 and SB 1211). If approved, this request will amend Section 830.A of the PZDC pertaining to ADU and JADU regulations. In accordance with section 510(c) of the Pomona City Charter, an affirmative vote of five-sevenths (5/7) of the City Council is required for this urgency ordinance to be adopted.

SB1439/GOVERNMENT CODE §84308 APPLICABILITY:

When this box is checked, it indicates the agenda item is subject to the Levine Act SB1439 requirements. Councilmembers are reminded to check their campaign contributions and determine whether they have received a campaign contribution of \$250 or more that would require disclosure and/or recusal from discussing or acting on this agenda item. Campaign contributions of \$250 or more made 1) by any person or entity who is identified in the agenda report as the applicant or proposer or 2) on behalf of the applicant or participant, including a parent, subsidiary or otherwise related business entity, or 3) by any person who has a financial interest in the agenda item requires a councilmember to comply with SB1439.

FISCAL IMPACT:

The adoption of the urgency ordinance will not result in any fiscal impact at this time.

PREVIOUS RELATED ACTION:

On December 11, 2024 the Planning Commission adopted PC Resolution No. 24-028, recommending the City Council adopt a non-urgency ordinance, amending Section 830.A of the PZDC pertaining to ADU and JADU regulations, in compliance with state law.

ENVIRONMENTAL IMPACT:

Under California Public Resources Code section 21080.17, the California Environmental Quality Act ("CEQA") does not apply to the adoption of an ordinance by a city or county implementing the provisions of Section 65852.1 or Article 2 (commencing with Section 66314) of Chapter 13 of Division 1 of Title 7 of the Government Code, which is California's Accessory Dwelling Unit and Junior Accessory Dwelling Unit law. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State's Accessory Dwelling Unit law.

DISCUSSION:

New State Law

In recent years, the California Legislature has approved, and the Governor has signed into law, a number of bills that, among other things, amended Government Code (GC) Sections 66310 to 66342 to impose new limits on local authority to regulate ADUs and JADUs. In 2024, the California Legislature approved, and the Governor signed into law, new bills (AB 2533 and SB 1211) that further amends GC Sections 66310 to 66342 ("New Amendments"). Below is a summary of some of the new regulations adopted under the New Amendments:

- AB 2533
 - JADUs may no longer be denied a permit to legalize, unless written findings are made;
 - Written findings to deny a permit to legalize an ADU or JADU are now based on the Health and Safety Code (not the Building Code); and
 - Mandates new public-notification requirements about limits on local regulation, substandard-building criteria, and pre-application inspection by a private contractor.

- SB 1211
 - Prohibits local agencies from requiring replacement parking when an uncovered parking space is demolished for or replaced with an ADU;
 - Adds a definition for “livable space”; and
 - The maximum number of detached ADUs permitted on a multi-family lot with an existing multi-family dwelling is eight (8) or as many existing units on the lot, whichever is less.

Letter from the Department of Housing and Community Development (“HCD Letter”)

The California Department of Housing and Community Development (HCD) conducted a review of the City’s ADU Ordinance No. 4324, adopted on December 19, 2022, and issued a findings letter identifying components of the ordinance that do not comply with State ADU and JADU laws. It should be noted that HCD did not conduct an analysis of the City’s most recent ADU standards which were adopted as part of the new zoning code update effective July 31, 2024. Below is a list of the seven (7) issues with ADU Ordinance No. 4324 that HCD has identified and how the City is addressing each issue.

Issue 1 – Urgency Ordinance. The HCD Letter indicates that Attorney General Rob Bonta issued a memo on the use of urgency ordinances as they pertain to housing development issues such as ADUs, admonishing local governments that urgency ordinances are strictly limited to emergency or exigent circumstances.

Resolution. The latest ADU standards will be adopted under a standard ordinance as recommended by the Attorney General. Therefore, the issue raised by HCD is considered addressed.

Issue 2 – Statutory Numbering. The HCD Letter indicates the City’s ordinance contains several references to code sections that were deleted by SB 477, effective March 25, 2024. These include Government Code Sections 65852.2, 65852.22 and 65852.26. The contents of these sections were relocated to Government Code, Title 7, Division 1, Chapter 13 (Sections 66310-66342, see Enclosure). The City must amend the Ordinance to refer to the correct code sections.

Resolution. The new ADU ordinance references the correct Government Code sections. Therefore, the issue raised by HCD is considered addressed.

Issue 3 – Primary Dwelling Definition. The HCD Letter indicates that the City must amend the definition of “Primary Dwelling Unit” to include both single-family dwellings and

multifamily dwellings and must review every reference to “Primary Dwelling Units” within the ordinance to comply with State ADU Law.

Resolution. The new ADU ordinance will remove the definition of Primary Dwelling Unit to avoid any conflict with State law. Therefore, the issue raised by HCD is considered addressed.

Issue 4 – Unit Allowance. The HCD Letter indicates that the City must amend the provision related to “Unit Allowance” as it does not reflect the maximum number of ADUs allowed to be constructed on a single-family property.

Resolution. The provisions related to “Unit Allowance” were removed in their entirety from the current ADU standards in order to avoid any conflict with State law. Therefore, the issue raised by HCD is considered addressed.

Issue 5 – JDAU Rental Terms. The HCD Letter indicates that Government Code Section 66333 does not require rental term minimums for JADUs and therefore such a requirement would be in violation of State JADU Law. The City must amend the ordinance accordingly.

Resolution. The new ADU ordinance will remove any language related to JADU rental terms in its entirety to avoid any conflict with State law. Therefore, the issue raised by HCD is considered addressed.

Issue 6 – Owner Occupancy. The HCD Letter indicates that Ordinance No. 4234 states, “Unless applicable law requires otherwise, all ADUs that are created on or after January 1, 2025 are subject to an Owner-occupancy requirement.” However, Government Code Section 66315 states "Section 66314 establishes the maximum standards that a local agency shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement..." Therefore, the City must remove this section from the Ordinance.

Resolution. The new ADU ordinance will remove the owner-occupancy requirement for ADUs to avoid any conflict with State law. Therefore, the issue raised by HCD is considered addressed.

Issue 7 – Deed Restriction. The HCD Letter indicates that Ordinance No. 4234 states, “Prior to the issuance of a certificate of occupancy for an ADU or JADU, a deed restriction must be recorded against the title of the property in the County Recorder’s office....” However, Government Code Section 66315 states, "Section 66314 establishes the maximum standards that a local agency shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement..." Therefore, the City must amend the Ordinance to comply with State ADU Law.

Resolution. The latest ordinance removes any language related to requiring the recordation of a deed restriction for ADUs to avoid any conflict with State law. Therefore, the issue raised by HCD is considered addressed. Note that per GC Sec. 66333(c), the city may require the recordation of a deed restriction for JADUs.

Failure to comply with the existing ADU and JADU regulations as well as the New Amendments by January 1, 2025, renders the City's ADU ordinance null and void, thereby limiting the City to the application of the few default state standards provided in GC sections 66310 to 66342. The approval of ADUs based solely on these default statutory standards, without local regulations governing height, setback, landscape, and architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety.

The proposed urgency ordinance amends the City's local regulatory scheme for the construction of ADUs and JADUs to comply with the New Amendments as well as existing regulations, as applicable. The ADU code amendments are proposed for adoption by urgency ordinance as authorized by Government Code Section 36937, subdivision (b). In accordance with Section 510(c) of the Pomona City Charter, an affirmative vote from at least five-sevenths (5/7) of the City Council is necessary to adopt the urgency ordinance. Staff will also initiate a non-urgency ADU ordinance that will be considered by the Planning Commission before returning to the City Council for ultimate adoption.

COUNCIL PRIORITIES & GOALS:

This item supports the following 2021-2022 City Council priorities and goals:

Priority 2: Economic Development – Goal J: Encourage the development and maintenance of quality housing opportunities for all.

Prepared by:



Vinny Tam, AICP
Supervising Planner

ATTACHMENT(S):

Attachment No. 1 – Draft Urgency Ordinance No. 4353 and Exhibit A