



CITY OF POMONA

PLANNING COMMISSION REPORT

DATE: August 14, 2019

TO: Chairperson and Members of the Planning Commission

FROM: Development Services Department, Planning Division

SUBJECT: **A CODE AMENDMENT TO THE CITY OF POMONA ZONING ORDINANCE FOR THE PURPOSE OF REGULATING ACCESSORY DWELLING UNITS IN ACCORDANCE WITH STATE LAW**

A city-initiated request to amend the City of Pomona Zoning Ordinance (PZO) for the purpose of regulating Accessory Dwelling Units (ADUs) in accordance with State law. The request will include the following changes to the PZO: adding Section .5809-26 Accessory Dwelling Units, amending Sections .5809-13 Historic Preservation and Section .560 Variances, deleting "Second-Unit Housing" from Section .062 Definitions, and deleting Section .503-H(C)(4) Off-street Parking, Single-Family Residential Standards.

STAFF RECOMMENDATION

1. Staff recommends that the Planning Commission consider the amendments to the draft ordinance recommended by the Historic Preservation Commission;
2. That the Planning Commission, after considering the recommended amendments to the draft ordinance by the Historic Preservation Commission, adopt the attached draft Resolution recommending the City Council approve Code Amendment No. 12324-2019 (Attachment 1), as presented with the recommended amendments; or
3. That the Planning Commission, after considering the recommended amendments to the draft ordinance by the Historic Preservation Commission, adopt the attached draft Resolution recommending the City Council approve Code Amendment (CODE 12324-2019), without the recommended amendments.

PROJECT DESCRIPTION & BACKGROUND

State Law Regulating Accessory Dwelling Units

The State legislature first adopted regulations for second units in 1982 and subsequent amendments were adopted in 1986, 1990 and 1994. Under these earlier regulations, municipalities could require a discretionary permit for second units. In 2003, the State legislature approved State Assembly Bill (AB) 1866, which prohibited municipalities from requiring a discretionary permit for second units. In response to AB 1866, the City adopted an ordinance in 2003 to regulate second units in accordance with State law, including allowing ministerial approval of second units.

In September 2016, California State Senate Bill (SB) 1069, AB 2299 and AB 2406 were signed into law. The combined bills took effect on January 1, 2017, and modified California Government Code Sections 65852.1 and 65852.2 (Attachment 2) and added Section 65852.22, which governs how local agencies regulate Accessory Dwelling Units (ADUs) formerly and commonly known as second units, granny flats, secondary units, or in-law units. On January 1, 2018, two additional clean-up bills took effect, SB 229 and AB 494 that among other things further clarified language regulating ADUs.

The new State law is intended to address the shortage of affordable housing in California by easing restrictions on ADUs and includes several mandatory elements. The mandatory elements require that new ADUs be allowed in zones permitting single and multi-residential uses on properties with existing or proposed single residential units and eases development standards such as parking and unit size. If the minimum requirements of State law are satisfied by a local ordinance, the ordinance may impose development standards that include, but are not limited to parking, height, and setbacks as well as standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places. It should be noted that the intent of the Legislature is to facilitate local ordinances that “are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units (Government Code Section 65852.150).”

The new State law also clarified that second units would be referred to from this point forward as ADUs, which effectively nullified and voided the City’s existing Second Unit Ordinance. Local agencies have the option to adopt local regulations to implement the new legislation. Alternatively, local agencies can default to State law for regulation of ADUs. However, as discussed below, local agencies are given a certain amount of discretion if local regulations are adopted. The City’s current ADU ordinance is not in compliance with State law and is therefore deemed “null and void” as of January 1, 2017. As such, the City is currently relying on State law to regulate new ADUs within the City of Pomona.

The following list identifies pertinent mandatory elements of the new State law:

1. The ADU may not be sold separately from the main dwelling unit.
2. The lot must be zoned for single or multi-residential use and contain one existing single residential unit.
3. The ADU must be on the same lot as the main dwelling unit.

4. The maximum size of an attached ADU is 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.
5. The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.
6. 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.
7. Parking requirements for accessory dwelling units shall not exceed one parking space per unit.
8. Off street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking.
9. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts.
10. Applications for new ADUs must be approved ministerially (e.g. through building permit process) within 120 days of receipt.
11. The new ADU shall not be considered residential growth or be counted toward density limitations.
12. A local agency may not require a new or separate utility connection directly between the accessory dwelling unit and the utility if the ADU is within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety.
13. Notwithstanding any other section, no additional parking for an ADU may be required when:
 - a. The property is located within one half mile of public transit;
 - b. The property is located within an architecturally and historically significant historic district;
 - c. The property is entirely within the existing space of the existing primary residence or an existing accessory structure;
 - d. On street parking permits are required but not offered to the occupant of the accessory dwelling unit; or,
 - e. There is a car share vehicle located within one block of the accessory dwelling unit.

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

1. Designate areas where accessory dwelling units may be permitted. The designation of areas may be based on criteria including, but not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.
2. Impose standards related to number of parking spaces, height, setbacks, lot coverage, landscaping, 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, except as described above.

3. A local agency may reduce or eliminate parking requirements for any accessory dwelling unit.
4. A local agency may require that the property be owner-occupant and/or that the property be used for rentals of terms longer than 30 days.

In addition to ADUs, AB 2406 creates a new class of ADUs called Junior Accessory Dwelling Units (JADUs) that are entirely contained within the footprint of existing homes, implementation of JADUs is optional. JADUs must incorporate an existing bedroom, include an efficiency kitchen, have a door leading directly to the outside of the house, and be less than 500 square feet. This new law also requires jurisdictions if utilizing the JADU housing type to permit JADUs without an off-street parking space and without utility connection charges. At this time, staff does not recommend implementing AB 2406 as part of the City's new ADU Ordinance because implementation of SB 1069 and AB 2299 will already allow for efficiency units as small as 220 square feet, thereby incorporating many of the provisions of AB 2406.

Status of Accessory Dwelling Units in Pomona

Below is a current summary of permit activity for requests to construct new ADUs since the new State law became effective on January 1, 2017:

City-Wide

- Total number of applications: 155
- Total number of permits issued: 60

Historic Districts

- Total number of applications: 14
 - Hacienda Park: 3 applications
 - Wilton Heights: 5 applications
 - Lincoln Park: 6 applications
- Total number of permits issued: 5
 - Hacienda Park: 2 permit issued
 - Wilton Heights: 1 permit issued
 - Lincoln Park: 2 permit issued

Prior to the new State law regulating ADUs, the City issued 22 second-unit permits from January 2006 through December 2016, averaging approximately two (2) permits per year. Since the new State law became effective, the City has experienced a significant increase in ADU applications, with approximately 60 applications submitted per year.

Planning Commission and Historic Preservation Commission Meetings

During the course of developing the draft ADU Ordinance, staff obtained input from the public as well as the Planning and Historic Preservation Commissions at the following public meetings:

- December 16, 2018 – Historic Preservation Commission – Discussion Item
- February 13, 2019 – Planning Commission – Discussion Item
- April 17, 2019 – Joint Study Session of the Planning Commission and Historic Preservation Commission
- June 26, 2019 – Planning Commission – Discussion Item
- July 3, 2019 – Historic Preservation Commission – Discussion Item (*discussed in more detail below)

Public comments from these meetings generally included the following topics/questions:

- How will ADUs affect properties in historic districts?
- Can there be an architectural review for ADUs in historic districts?
- Owner occupancy requirements for ADUs.
- Consider the potential parking impacts of ADUs in historic districts.
- Consider limiting the size of ADUs to ensure they are affordable.

Planning Commission and Historic Preservation Commission comments from these meetings generally included the following topics/questions:

- Can the number of bedrooms be limited?
- What impact fees are applicable?
- What impacts on density within multi-residential zones?
- Are there significant public safety concerns related to traffic and parking resulting from new ADUs?
- Can the number of ADUs on a lot be limited?
- What are the utility connection and fee requirements?
- Affordability requirements for ADUs.
- Deed restrictions.
- Should Junior ADUs be considered?
- Protections for properties in historic districts.
- Owner occupancy requirements.

After discussion, the Planning and Historic Preservation Commissions directed staff to the address the following:

- Limit the number of ADUs to one per lot.
- Consider limiting the number of bedrooms to no more than two per ADU.
- Consider limiting the maximum size of ADUs as well as a proportional standard based on the size of the primary dwelling unit.
- Limit the lot coverage requirement to 35% maximum.
- Develop a minimum lot size standard.
- Limit building height of ADUs to 35 feet and two stories, but no taller than the height of the existing primary dwelling unit.

- Limit rental periods to a minimum of 30 days.

ANALYSIS

The draft ADU Ordinance was prepared based on staff research on the matter as well as input from the public, Planning Commission, and Historic Preservation Commission. The draft Ordinance complies with State law, while including local regulations to ensure that ADUs are, among other things, compatible with surrounding development and appropriately relate to the primary dwelling in terms of size, location on the lot, and appearance, to the extent possible under the constraints of State law. As such, staff is recommending that the City's existing second-unit ordinance be repealed and that a new ordinance regulating ADUs be adopted in accordance with State law.

Allowed Zones

State law allows one ADU on lots containing an existing or proposed single-residential unit, in zones that allow single or multi-residential uses. Consistent with State law, the draft ADU Ordinance would allow ADUs in zones as well as specific plan areas that allow single-residential uses. An ADU will not be permitted on a residential lot that contains two or more residential units. The draft Ordinance would allow unpermitted ADUs to be converted to legal units if they meet the required development standards of the ordinance.

Designated Areas

In addition to the zoning criteria, State law allows local agencies to designate areas where ADUs would be allowed based on, but not limited to, the adequacy of water and sewer services, impacts on traffic flow and public safety. Staff coordinated with both the Public Works and Water Resources Department to identify any potential areas that may be restricted from allowing ADUs based on these criteria and none were identified. As such, the draft Ordinance does not limit the development of ADUs in this respect.

Review Process

As mandated by State law, the draft ADU Ordinance establishes a ministerial approval process to allow the development of ADUs. Under the draft Ordinance, approval of a "Ministerial Accessory Dwelling Unit Permit" would be required to allow the construction of new ADUs that are in compliance with the established ministerial development standards of the Ordinance. The developments standards established under the ministerial review process are in full compliance with State law and would not unreasonably restrict the ability of homeowners to create accessory dwelling units.

To further facilitate the development of ADUs, the draft Ordinance also includes three discretionary processes that are considered to be above and beyond the development standards established by the State mandates and offer a path forward for proposed ADUs that would otherwise not meet the minimum requirements of the recommended ministerial review process:

- *Minor Deviation Variance*: proposed ADUs that do not meet the requirements for Lot Coverage, Minimum Distance between Buildings, and/or Yards, may apply for a Minor Deviation Variance in accordance with PZO Section .560.
- *Conditional Use Permit*: Proposed ADUs that are proposed outside of a historic district and/or identified on the local, California, or National register of historic places, and are not eligible to apply for a Minor Deviation Variance, may apply for a Conditional Use Permit in accordance with PZO Section .580.
- *Major Certificate of Appropriateness*: Proposed ADUs that are proposed to be located in a historic district and/or identified on the local, California, or National register of historic places and do not meet the ministerial review development standards may apply for a Major Certificate of Appropriateness in accordance with PZO Section .5809-13.

Configuration of Accessory Dwelling Units

Under the new State law, ADUs can be either attached to the main dwelling unit (including garage conversions), detached and on the same lot as the main dwelling unit or located within the living area of the existing dwelling unit, as shown below.



Number of Rooms

State law provides flexibility to local agencies in regulating the numbers of rooms for ADUs. Based on feedback from the Planning and Historic Preservation Commissions, there was a concern that parking issues may arise if there was no limit on the number of rooms for ADUs. The draft ADU ordinance limits the number of rooms based on unit size. For ADUs less than 800 square feet in area, the maximum number of permitted rooms is four (4). For ADUs 800 square feet in area or greater, the maximum number of rooms is six (6). A room is defined in PZO Section .062 as "an unsubdivided portion of the interior of a dwelling unit, excluding bathrooms, kitchens, closet,

hallways and service porches.” Based on this definition a room may include a bedroom, den, office, living room, dining room, etc.

Unit Size

State law establishes a minimum size for ADUs that is the equivalent of an efficiency unit or 220 square feet. State law also establishes a maximum size for attached ADUs as 50% of the primary dwelling unit or 1,200 square feet, whichever is less, and a maximum of 1,200 square feet for detached ADUs. Based on concerns over potential impacts to parking and overcrowding, the Commission directed staff to consider lot size and size of the primary dwelling unit in developing standards for unit size. In response, the draft Ordinance includes a sliding scale for the unit size standard that is proportional to lot size as follows: 800 square feet maximum for lots less than 7,200 square feet and 1,200 square feet maximum for lots 7,200 square feet or greater. This standard maintains the requirement to limit the size of attached ADU’s to 50% of the primary dwelling unit, regardless of lot size. The establishment of these restrictions on lot size reinforces the subordinate nature of ADUs to the primary dwelling unit. These standards also help maintain the existing character of residential neighborhoods, pattern of development, and intensity of use on a site.

Building Height

State law provides flexibility to local agencies in regulating the maximum allowable building height. The draft ADU ordinance limits the building height to two stories and 35 feet, but in no case shall an ADU be taller than the primary dwelling unit. This standard is consistent with that of existing residential zones but also reinforces the subordinate nature of ADUs to the primary dwelling unit while maintaining the existing character of residential neighborhoods, pattern of development, and intensity of use on a site.

Yards

State law provides flexibility to local agencies in regulating yards (a.k.a. setback) standards. The draft ADU ordinance establishes the following yard standards:

- Front Yard – 25 feet minimum
- Side Yard – 5 feet minimum
- Side Yard for Corner and Reversed Corner Lots – 10 feet minimum
- Rear Yard – 5 feet minimum for detached ADUs
- Rear Yard – 25 feet minimum for attached ADUs

These standards are consistent with that of existing residential zones and also help to maintain the existing character of residential neighborhoods, pattern of development, and intensity of use on a site.

Parking

While State law provides flexibility to local agencies in regulating parking standards, it also establishes mandatory exemptions. For instance, properties located within one half mile of public transit are exempt from providing parking. Approximately 95% of properties that are eligible to construct ADUs in Pomona are within one half mile of public transit and therefore exempt from providing parking. Given these circumstances, the draft ADU Ordinance does not require the provision of parking for ADUs. State law also allows municipalities to require replacement parking on a 1:1 ratio for the existing residence in cases where a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted, in whole or in part, to 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 (e.g. carport), open spaces, tandem parking, or by the use of a mechanical automobile parking lift.

Owner Occupancy and Rental Terms

State law provides flexibility to local agencies to require owner-occupancy of properties that develop an ADU. Not requiring owner-occupancy could create a market for investors to acquire residential properties and develop ADUs to maximize rental income. As a result, the City could experience a surge in both absentee property owners and the cost of rent for ADUs. The draft ADU Ordinance requires that either the primary dwelling unit or the ADU must be owner-occupied at all times. The draft Ordinance also includes language that allows the Development Services Director or their designee to grant an exception for a period not to exceed eighteen months at the owner's request. Only one such exemption would be granted within a five year time period. This exemption would allow for scenarios where an owner may not be able to occupy the property such as a service members being called to duty. Finally, the draft ADU Ordinance requires that the ADU be rented for a period of no fewer than 30 days.

Additional Historic Preservation Commission Recommendations

In addition to the public meetings previously mentioned, the Historic Preservation Commission held its regularly scheduled meeting on July 3, 2019 where staff presented the draft ADU Ordinance one more time as a discussion item. The Commission recommended that the Planning Commission consider the following additional amendments to the draft ADU Ordinance:

- Incorporate architectural standards as part of the ministerial review of Interior ADUs in historic districts to ensure any exterior modifications that occur as a result of an Interior ADU do not adversely impact the historical significance of properties in historic districts. Any proposed Interior ADU that does not meet the ministerial architectural standards (or any other ministerial development standards) may apply for a Major Certificate of Appropriateness.
- Modify the owner-occupancy exception period from 18 months to 24 months.

The draft ADU Ordinance incorporates the recommended amendments by the Historic Preservation Commission. However, should the Planning Commission wish to not include these recommended amendments in the draft Ordinance, staff would revise the Ordinance to exclude them for consideration by the City Council.

ENVIRONMENTAL REVIEW

State CEQA Guidelines Section 15282(h) establishes a statutory exemption for 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. As such, the proposed Code amendment is consistent with this exemption and no additional environmental review or documentation is required under the California Environmental Quality Act (CEQA).

NOTICING

Public noticing was completed in accordance with State law. A public hearing notice was published on Friday, August 2, 2019 in the Inland Valley Daily Bulletin (Attachment 3).

CONCLUSION

The draft ADU Ordinance would bring the City's Zoning Code into compliance with State law pertaining to ADUs and would provide a clear path for adding additional housing units to the City's housing stock. The draft Ordinance was crafted over several months after hearing comments from the public and relevant Commissions. The draft Ordinance will minimize impacts to surrounding and existing residential neighborhoods while ensuring compliance with State law. As such, staff recommends approval of this Code Amendment.

Respectfully Submitted:

Gustavo N. Gonzalez, AICP
Planning Manager

Prepared By:

Vinny Tam, AICP
Senior Planner

ATTACHMENTS

1. Draft Planning Commission Resolution & Exhibit A - Draft Ordinance
2. California Government Code Section 65852.2
3. Proof of Publication of Public Hearing Notice