



# **CITY OF POMONA**

## **PLANNING COMMISSION REPORT**

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**DATE:** June 23, 2021

**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 TO MAINTAIN COMPLIANCE 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) and Junior Accessory Dwelling Unit (JADUs) in hillside areas and in accordance with State law as well as to codify policy interpretations issued in December of 2020 by the California Department of Housing and Community Development (HCD). This request also includes amendments necessary to comply with Assembly Bill 3182 ("AB 3182") and other staff-initiated updates intended to add clarity to the City's ADU regulations for staff and the general public. If approved, this request will amend section .5809-26 of the City of Pomona Zoning Ordinance pertaining to ADU and JADU regulations.

### **STAFF RECOMMENDATION**

The Planning Division recommends the Planning Commission adopt the attached draft Resolution (Attachment 1 and 2) recommending the City Council approve Code Amendment (CODE 14672-2020).

### **PROJECT DESCRIPTION & BACKGROUND**

#### **State Law Regulating Accessory Dwelling Units**

The State legislature first adopted regulations for second units in 1982. The State legislature adopted subsequent amendments to the original law in 1986, 1990 and 1994. Under these earlier regulations, municipalities could require a conditional use permit for second units. In 2003, the State legislature approved AB 1866, which prohibited municipalities from requiring a conditional use 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, State Assembly Bill (AB) 2299 and State Assembly Bill (AB) 2406 were signed into law. The combined bills took effect on January 1, 2017, making significant modifications to California Government Code Section 65852.1 and 65852.2, as well as adding 65852.22 (which collectively govern how local agencies regulate ADUs and JADUs). On January 1, 2018, two additional clean-up bills took effect (SB 229 and AB 494) which, among other things, further clarified language regulating ADUs. In response to the bills that became effective on January 1, 2017 and January 1, 2018, the City adopted Ordinance No. 4269 (effective October 16, 2019).

Subsequent to the City's adoption of Ordinance No. 4269, the California Legislature approved and the Governor signed into law a number of bills that, among other things, amended Government Code section 65852.2 (Attachment 3) and 65852.22 (Attachment 4) to impose new limits on local authority to regulate ADUs and JADUs. The new ADU laws took effect on January 1, 2020. Any ADU ordinance that does not comply with the new ADU laws became null and void on that date as a matter of law. As such, in accordance with Government Code section 36937, subdivision (b), an urgency ordinance (Ordinance No. 4278) was adopted by the City Council on December 16, 2019. The urgency ordinance amended the City's local regulatory scheme for the construction of ADUs and JADUs to comply with the amended provisions of Government Code sections 65852.2 and 65852.22 (that went into effect on January 1, 2020). To ensure ADU and JADU development standards were in place in the event that the urgency ordinance was legally challenged, the City Council adopted a non-urgency ordinance (Ordinance No. 4281) that went into effect on April 15, 2020.

In September of 2020, the California Legislature approved, and the Governor signed into law, AB 3182. Among other things, AB 3182 clarifies that if a City does not act on a complete ADU application within 60 days (subject to limited exceptions), the application is deemed approved. AB 3182 also compels cities to allow construction of an ADU and JADU with only a building permit when the units are on a lot with a proposed or existing single-family dwelling and located within the space of a single-family dwelling or within the space of an existing accessory structure (previously, the italicized "and" above was an "or" under state law).

Further, in December of 2020, HCD issued an update to its publication titled "Accessory Dwelling Unit Handbook (Handbook)" (Attachment 5). The updated publication provides a summary of the state regulations as well additional policy interpretations not identified in the legislation itself. Based on the policy interpretations provided in the Handbook, staff has determined it necessary to update the existing ordinance accordingly.

In addition to the revisions prompted by HCD's guidance and AB 3182, the ordinance also includes regulations governing the allowed height for ADUs located in hillside areas. Such regulations are intended to limit the impact of ADUs on neighboring properties due to topography.

Finally, the ordinance includes other minor amendments intended to add clarity to the City's ADU regulations for staff and the general public.

### **Status of Accessory Dwelling Units**

Below is a summary of permit activity for requests to construct new ADUs from January 1, 2017 to June 8, 2021:

- Total number of applications city-wide – 373
  - Rate of approximately 110 ADU permit applications per year since 2019
  - Rate of approximately 14 ADU permit applications per month in 2021

### **ANALYSIS**

#### **Hillside Development**

The intent of adopting additional regulations for hillside areas is to limit the impact of ADUs that may be exacerbated due to topography. Below is a summary of the proposed amendments related to hillside development of ADUs.

1. Amend Section .5809-26(C) Definitions to add a definition for Crawl Space.

Crawl Space. Crawl Space means an underfloor space that is not a basement as defined in the 2019 California Residential Code. Any crawl space taller than thirty-six inches shall be included in the calculation of the total floor area for an ADU.

2. Amend Section .5809-26(C) Definitions to add a definition for Floor Area.

Floor Area. Floor Area, as defined in the 2019 California Building Code, means the floor area within the inside perimeter of the exterior walls of the building under consideration, exclusive of vent shafts and courts, without deduction for corridors, stairways, ramps, closets, the thickness of interior walls, columns or other features. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above. The gross floor area shall not include shafts with no openings or interior courts.

3. Amend Section .5809-26(G)(6) Building Height to include provisions that address topography.

No ADU shall have a height greater than two (2) stories or thirty-five (35) feet. However, in no case shall an ADU be taller than the Primary Dwelling Unit.

In instances where any portion of an abutting lot, zoned for residential use, has a ten foot difference in elevation or greater from the lot proposing an ADU and portions of the ADU are within twenty-five (25) feet of any side or rear property line, the entire ADU shall be no taller than sixteen (16) feet.

In instances where an abutting lot, zoned for residential use, has a ten foot difference in elevation or greater from the lot proposing an ADU and portions of the ADU are greater than twenty-five (25) feet from of any side or rear property line, the ADU shall be no taller than those heights permitted in subsection (a).

## **AB 3182**

Proposed amendments to comply with AB 3182 include the following:

1. Amend Section .5809-26(D)(1)(a) to clarify that homeowners can get a converted ADU *and* JADU with only a building permit on a lot with a proposed or existing single-family dwelling.

Proposed Code Amendment:

Interior ADU on Single-unit Lot. One Interior ADU as described in this subsection (D)(1)(a) and one JADU on a lot with a proposed or existing single-unit dwelling on it, where the ADU or JADU:

2. Amend Section .5809-26(D)(3)(b) to clarify that if the City does not act on a complete application to create an ADU or JADU within 60 days, the application is deemed approved.

Proposed Code Amendment:

The City must act on an application to create an ADU or JADU within 60 days from the date that the City receives a completed application. If the City does not act upon the completed application within 60 days, the application is deemed approved unless either:

## **State Guidance**

The intent of adopting regulations reflecting new State guidance is to ensure compliance with State law as well as to provide clarity to the City's ADU regulations for the public and staff. Below is a summary of applicable State guidance for ADUs requiring amendments to existing regulations as well as the proposed amendments.

1. Amend Section .5809-26(D)(1) and .5809-26(G)(4) to clarify size requirements of existing accessory structures converted to ADUs.

HCD ADU Handbook excerpt (p11):

*Can minimum and maximum unit sizes be established for ADUs?*

*Yes. A local government may, by ordinance, establish minimum and maximum unit size requirements for both attached and detached ADUs. However, maximum unit size requirements must be at least 850 square feet and 1,000 square feet for ADUs with more than one bedroom. For local agencies without an ordinance, maximum unit sizes are 1,200 square feet for a new detached ADU and up to 50 percent of the floor area of the existing primary dwelling for an attached ADU (at least 800 square feet). Finally, the local agency must not establish by ordinance a minimum square footage requirement that prohibits an efficiency unit, as defined in Health and Safety Code section 17958.1.*

*The conversion of an existing accessory structure or a portion of the existing primary residence to an ADU is not subject to size requirements. For example, an existing 3,000 square foot barn converted to an ADU would not be subject to the size requirements, regardless if a local government has an adopted ordinance. Should an applicant want to expand an accessory structure to create an ADU beyond 150 square feet, this ADU would be subject to the size maximums outlined in state ADU law, or the local agency's adopted ordinance.*

Proposed Code Amendment:

An existing Accessory Structure of any size may be converted to an Interior ADU.

2. Amend Section .5809-26(D)(1) to clarify an Interior ADU on a Single-unit Lot may not be expanded beyond 150 additional square feet to accommodate ingress and egress.

HCD ADU Handbook excerpt (p16):

*Can an ADU converting existing space be expanded? (Handbook p16)*

*Yes. An ADU created within the existing or proposed space of a single-family dwelling or accessory structure can be expanded beyond the physical dimensions of the structure. In addition, an ADU created within an existing accessory structure may be expanded up to 150 square feet without application of local development standards, but this expansion shall be limited to accommodating ingress and egress. An example of where this expansion could be applicable is for the creation of a staircase to reach a*

*second story ADU. These types of ADUs shall conform to setbacks sufficient for fire and safety.*

*A local agency may allow for an expansion beyond 150 square feet, though the ADU would have to comply with the size maximums as per state ADU law, or a local agency's adopted ordinance.*

*As a JADU is limited to being created within the walls of a primary residence, this expansion of up to 150 square feet does not pertain to JADUs.*

Proposed Code Amendment:

*Any proposed expansions greater than the 150 additional square feet limited to accommodating ingress and egress are not permitted.*

3. Amend Section .5809-26(D)(1) clarifying which standards are applicable to a “statewide exemption ADU.”

HCD ADU Handbook excerpt (p16):

*Can minimum and maximum unit sizes be established for ADUs?*

*Yes. A local government may apply development and design standards that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards shall be sufficiently objective to allow ministerial review of an ADU. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i))*

*ADUs created under subdivision (e) of Government Code 65852.2 shall not be subject to design and development standards except for those that are noted in the subdivision.*

Proposed Code Amendment:

*No other development standards other than those identified in this subsection (D) Ministerial Approvals, as applicable, and subsection (F) General ADU standards shall be required.*

4. Amend Section .5809-26(D)(1) and .5809-26(G)(2) to clarify what is considered a multi-unit dwelling structure.

HCD ADU Handbook excerpt (p21):

*What is considered a multifamily dwelling?*

*For the purposes of state ADU law, a structure with two or more attached dwellings on a single lot is considered a multifamily dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings for the purposes of state ADU law.*

Proposed Code Amendment:

*A structure with two or more attached dwellings on a single lot is considered a multi-unit dwelling structure and multiple detached single-unit dwellings on the same lot are not considered multi-unit dwellings for purposes of Section .5809-26 of the City of Pomona Zoning Ordinance.*

5. Amend Section .5809-26(F)(2) to clarify when fire sprinklers are required for an ADU located in a multi-unit dwellings.

HCD ADU Handbook excerpt (p17):

*Are fire sprinklers required for ADUs?*

*No. Installation of fire sprinklers may not be required in an ADU if sprinklers are not required for the primary residence. For example, a residence built decades ago would not have been required to have fire sprinklers installed under the applicable building code at the time. Therefore, an ADU created on this lot cannot be required to install fire sprinklers. However, if the same primary dwelling recently undergoes significant remodeling and is now required to have fire sprinklers, any ADU created after that remodel must likewise install fire sprinklers. (Gov. Code, § 65852.2, subds. (a)(1)(D)(xii) and (e)(3).)*

*Please note, for ADUs created on lots with multifamily residential structures, the entire residential structure shall serve as the “primary residence” for the purposes of this analysis. Therefore, if the multifamily structure is served by fire sprinklers, the ADU can be required to install fire sprinklers.*

Proposed Code Amendment:

*Fire Sprinklers. Fire sprinklers are required in an ADU if sprinklers are required in the primary residence. For purposes of this paragraph, in the case*

of multi-unit structures, the entire residential structure shall be considered the primary residence.

6. Amend Section .5809-26(G)(2) to clarify one ADU may be developed on a lot with multiple detached single-unit dwellings.

HCD ADU Handbook excerpt (p10):

*Can I create an ADU if I have multiple detached dwellings on a lot?*

Yes. A lot where there are currently multiple detached single-family dwellings is eligible for creation of one ADU per lot by converting space within the proposed or existing space of a single-family dwelling or existing structure or a new construction detached ADU subject to certain development standards.

Proposed Code Amendment:

No more than one ADU may be permitted on lots with multiple detached single-unit dwellings.

7. Amend Section .5809-26(G)(4) to clarify the maximum unit size for Attached ADUs.

HCD ADU Handbook excerpt (p11):

*Can minimum and maximum unit sizes be established for ADUs?*

Yes. A local government may, by ordinance, establish minimum and maximum unit size requirements for both attached and detached ADUs. However, maximum unit size requirements must be at least 850 square feet and 1,000 square feet for ADUs with more than one bedroom. For local agencies without an ordinance, maximum unit sizes are 1,200 square feet for a new detached ADU and up to 50 percent of the floor area of the existing primary dwelling for an attached ADU (at least 800 square feet). Finally, the local agency must not establish by ordinance a minimum square footage requirement that prohibits an efficiency unit, as defined in Health and Safety Code section 17958.1.

Proposed Code Amendment:

The total floor area of an Attached ADU may not exceed eight hundred fifty (850) square feet for a studio or one bedroom unit or one thousand (1,000) square feet for a unit with two or more bedrooms.



For lots 7,200 square feet in area or greater.

~~The total floor area of an Attached ADU may not exceed fifty (50%) percent of the total Living Area of the Primary Dwelling Unit. Owner, in no case shall an Attached ADU exceed one thousand two hundred (1,200) square feet for a unit with two or more bedrooms.~~

8. Amend Section .5809-26(G)(12) to clarify replacement parking is not required when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU.

HCD ADU Handbook excerpt (p12):

*Is flexibility for siting parking required?*

*Yes. Local agencies should consider flexibility when siting parking for ADUs. Offstreet parking spaces for the ADU shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made. Specific findings must be based on specific site or regional topographical or fire and life safety conditions.*

*When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU, or converted to an ADU, the local agency shall not require that those offstreet parking spaces for the primary unit be replaced. (Gov. Code, § 65852.2, subd. (a)(D)(xi).)*

Proposed Code Amendment:

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, those off-street parking spaces are not required to be replaced.

9. Amend Section .5809-26(H)(4) to clarify an attached garage may be converted to an JADU.

HCD ADU Handbook excerpt (p18):

*Are JADUs allowed in detached accessory structures?*

*No, JADUs are not allowed in accessory structures. The creation of a JADU must be within the single-family residence. As noted above, attached garages are eligible for JADU creation. The maximum size for a JADU is 500 square feet. (Gov. Code, § 65852.22, subs. (a)(1), (a)(4), and (h)(1).)*

Proposed Code Amendment:

Location. A JADU shall be constructed within the existing walls of the Primary Dwelling Unit, including any attached garage.

## **OTHER MISCELLANEOUS STAFF AMENDMENTS**

In addition to the foregoing, the ordinance includes clarifying edits to subsection (D)(1)(c) [Interior ADU on Multi-unit lot], (D)(3)(b)(ii) [Process and Timing], and (G)(4) [Unit size].

1. Amend Section .5809-26(D)(1)(c) to clarify size requirements of existing accessory structures converted to ADUs.

Proposed Code Amendment:

Interior ADU on Multi-unit Lot. One or more ADUs within portions of existing multi-unit dwelling structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each Interior ADU complies with state building standards for dwellings. Under this subsection (D)(1)(c), Aat least one Interior ADU is allowed within an existing multi-unit dwelling, up to a quantity equal to 25 percent of the existing multi-unit dwelling units.

2. Amend Section .5809-26(D)(3)(b)(ii) to clarify process and timing requirements for ADUs.

Proposed Code Amendment:

The City must act on an application to create an ADU or JADU within 60 days from the date that the City receives a completed application. If the City does not act upon the completed application within 60 days, the application is deemed approved unless either:

The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or

~~In the case of a JADU and~~ When the application to create an ADU or JADU is submitted with a permit application to create a new single-family dwelling on the lot, the City may delay acting on the permit application for the ADU or JADU until the City acts on the permit application to create the new single-family dwelling. ~~But the~~

application to create the ADU or JADU will still be considered ministerially without discretionary review or a hearing.

3. Amend Section .5809-26(G)(4) to clarify the maximum unit size for Attached ADUs.

Proposed Code Amendment:

For lots of any size.

Any Interior ADU that does not comply with subsection (D)(1)(a) Interior ADU on Single-unit Lot, shall be subject to all applicable developments standards identified in subsection (G) Specific ADU Requirements, such as, Coverage, Yards, etc.

Application of other development standards in this subsection ~~(FG)~~ “~~General ADU and JADU~~ Specific ADU Requirements”, such as lot coverage, might further limit the size of the ADU, but no application of lot coverage or open-space requirements may require the ADU to be less than eight hundred (800) square feet.

## ENVIRONMENTAL REVIEW

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 65852.2 of the Government Code, which is California’s ADU law (and which also regulates JADUs, as defined by section 65852.22). Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State’s ADU law.

In addition to being statutorily exempt from CEQA, the proposed ordinance is also categorically exempt from CEQA under the Class 3 exemption set forth in State CEQA Guidelines section 15303. The Class 3 exemption categorically exempts from CEQA, among other things, the construction and location of new, small structures and the conversion of existing small structures from one use to another. Section 15303 specifically lists the construction of appurtenant accessory structures and garages as examples of activity that expressly falls within this exemption. Here, the ordinance is categorically exempt under the Class 3 exemption because the ordinance regulates the conversion of existing structures into, and the new construction of, ADUs and JADUs, which are, by definition, structures that are accessory to a primary dwelling on the lot. Moreover, the City Council finds that none of the “exceptions” to the use of the Class 3 exemption, set forth in State CEQA Guidelines section 15300.2, apply here.

## NOTICING

Public noticing was completed in accordance with State law. A hearing for public notice was published on Friday, June 11, 2021 in the Inland Valley Daily Bulletin (Attachment 6).

## **CONCLUSION**

The draft code amendment will implement the regulation of ADUs in accordance with State law while as well as regulations for hillside areas is to limit impacts that may be exacerbated due to topography.

Respectfully Submitted:

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## **ATTACHMENTS**

1. Draft Planning Commission Resolution No. 21-019
2. Draft Planning Commission Resolution No. 21-019, Exhibit A
3. California Government Code Section 65852.2, Effective 1/1/2020
4. California Government Code Section 65852.22, Effective 1/1/2020
5. HCD ADU Handbook 12/2020
6. Proof of Publication of Public Hearing Notice
7. Presentation