

County of Santa Clara
Department of Planning and Development



100200

DATE: February 11, 2020

TO: Board of Supervisors

FROM: Jacqueline R. Onciano, Director, Dept. of Planning and Development

SUBJECT: Ordinance Amendments for ADUs and JADUs

RECOMMENDED ACTION

Consider recommendations from the Department of Planning and Development relating to regulating Accessory Dwelling Units and Junior Accessory Dwelling Units in accordance with State law, including an option that allows Movable Tiny Homes to further address the regional housing shortage.

Possible action:

- i. Adopt Ordinance No. NS-1200.371 amending various sections of Appendix I, Zoning, of the County of Santa Clara Ordinance Code for the purpose of regulating of Accessory Dwelling Units and Junior Accessory Dwelling Units in accordance with State law and adding Movable Tiny Homes.

OR

- ii. Adopt Ordinance No. NS-1200.372 amending various sections of Appendix I, Zoning, of the County of Santa Clara Ordinance Code for the purpose of regulating of Accessory Dwelling Units and Junior Accessory Dwelling Units in accordance with State law.

FISCAL IMPLICATIONS

There is no impact to the County General Fund as a result of these actions.

CONTRACT HISTORY

Not applicable.

REASONS FOR RECOMMENDATION

In response to Assembly Bill (AB) 68, AB 881, AB 587, AB 671 and Senate Bill (SB) 13, which amended Government Code Sections 65852.2 and 65852.22, and Health and Safety Code Section 17980.12, regarding Accessory Dwelling Units (ADU) and Junior Accessory

Dwelling Units (JADU), County Administration recommends amending various sections of County of Santa Clara Ordinance Code Appendix I (Zoning Ordinance). All bills became effective on January 1, 2020. The subject Zoning text amendments will align County Zoning standards with new California State Law requirements pertaining to ADUs and JADUs. Additionally, in response to the Board of Supervisors referral (Legislative File 100092 A; Supervisor Cortese) from the January 28, 2020 meeting, the amendments will recognize movable tiny homes as a type of ADU. In order to accomplish these amendments, the Administration is proposing repealing Section 4.10.340 and adding Section 4.10.015.

Should the Board wish to implement an Ordinance that includes movable tiny homes, the Board can take Recommended Action (i) to adopt the Ordinance in Attachment E. Should the Board not wish to implement an Ordinance that includes movable tiny homes at this time, the Board can take Recommended Action (ii) to adopt the Ordinance in Attachment F. Unless otherwise stated, all references in this report to the Ordinance updates refer to the version that includes movable tiny homes (Attachment E).

The following bolded points describe the pertinent recommended amendments to the County Zoning Ordinance:

Types of ADUs: The Administration recommends amendments that identify three different types of ADUs. Two of the amendments are required by State law, and one is proposed by staff to further address the County's housing crisis.

1. **Standard ADU:** Every property that is zoned for residential use is allowed to have an ADU. The ADU can be attached or detached to the primary residence.
2. **Junior ADU:** The new State laws recognize the ability to develop Junior ADUs, a third residential dwelling unit allowed, in addition to a Standard ADU. State laws mandate Junior ADUs to be attached to an existing single-family dwelling or a Standard ADU. Junior ADUs are limited to 500 sq. ft. in size and are required to have a separate entrance. A Junior ADU may have its own bathroom or can share a bathroom with the dwelling unit it is attached to and must contain a kitchen. The kitchen may be a full kitchen or an efficiency kitchen. An efficiency kitchen is defined to include cooking facilities with appliances, food preparation counters, and storage cabinets that are of reasonable size.
3. **Movable Tiny Home:** On January 28, 2020, the Board approved a Supervisor Cortese-authored referral to the Administration to consider options for allowing the development of movable tiny homes within single-family residential lots as an

innovative solution to address the regional housing crisis. A movable tiny home would be considered a type of ADU. The benefit to allowing movable tiny homes as a type of ADU is that they have a reduced building cost and can typically be installed quicker when compared with conventional permanent buildings. Movable tiny homes are pre-manufactured using conventional materials and include compliance with a set of building certification standards by the National Fire Protection Association (NFPA) 1192 standard or American National Standards Institute (ANSI) 119.5 standard. Recreation vehicles, which are self-propelled, are not considered a movable tiny home. Additionally, cargo containers/shipping containers will not be permitted to be used as a movable tiny home or an ADU.

In terms of development standards, movable tiny homes would have the same setback and height requirements as a detached Standard ADU, and only one movable tiny home would be allowed per property. Movable tiny homes must meet the following standards (See Attachment E, Ordinance Section 11, §4.10.015(E) for more details):

- Shall be Department of Motor Vehicle (DMV) registered and licensed;
- Shall not move under its own power;
- Shall be connected to approved water service, onsite wastewater treatment system or sewer system, and electric utilities;
- Shall include skirting to screen wheels, axles, tongue and hitch (under carriage) from view;
- Mechanical equipment, including holding tanks, shall be incorporated into the original design of the unit and not added on to the exterior;
- Shall resemble a typical small cottage or bungalow unit with cladding and trim materials that provide thermal insulation and weather resistance, and double pane windows labeled for building use; and
- Shall be certified by an accredited, qualified third-party inspector for ANSI/NFPA compliance.

For a full definition and development standards for Standard ADUs, Junior ADUs, and movable tiny homes, see Sections 1.30.030, 2.10.030, and 4.10.015 in the attached proposed Ordinance (Attachment E).

Development Standards: The Administration recommends the following modifications in development standards for ADUs, including sizes, setbacks, and heights, in conformance with State law:

1. Elimination of Minimum Lot Size: The current Zoning Ordinance has different standards based on zoning districts and lot sizes for the development of an ADU within residentially zoned areas. Pursuant to State law, the Department has eliminated any minimum lot size requirements, and removed the lot size ranges that relate to ADU structure size. These changes achieve consistency with State law as well as provide a consistent approach across all zoning districts within the County.

2. Standardizing Maximum ADU Size: The current Zoning Ordinance prescribes unequal maximum ADU sizes of either 800 sq. ft., 1,000 sq. ft. or 1,200 sq. ft. based on the zoning district. Given the increase in minimum ADU size prescribed by State law, coupled with the County's goal to provide an equal application of ADU standards, the Department recommends a maximum ADU size of 1,200 sq. ft. for all zoning districts that are permitted to have an ADU. This is permissible by new State law, as the maximum size allowed by State law is 1,200 sq. ft. (Attachment E – Zoning Ordinance Section 4.10.015(C) & (D)).

3. Floor Area Ratio in the -n1/-n2 combining districts: The County's Neighborhood Preservation Combining Districts, known as the -n1 and -n2 combining districts, provide a maximum floor area ratio (FAR) for construction on a property. New State law requires that ADUs not count toward FAR for up to 800 sq. ft. Due to this requirement, the Department recommends amendments to the Zoning Ordinance to specify that ADUs do not count towards floor area requirements. Under the recommended amendments, a Standard ADU of up to 1,200 sq. ft. and a Junior ADU of up to 500 sq. ft. will not count towards FAR. (Attachment E, Sections 3.40.030 and 3.40.040).

4. Setbacks: The current County Ordinance requires the construction of an ADU to meet the same setbacks as the primary residence as prescribed by the applicable zoning district. New State law allows the construction of an ADU (attached or detached) with side and rear yard setbacks of four (4) feet, which is far less restrictive than the County's current Ordinance. The amendments to the County Ordinance incorporate this State law requirement. The Department proposes maintaining the front yard setback requirement to be the same as the primary residence. (Attachment E, Section 4.10.015).

Additionally, State law allows the expansion of an existing, setback non-conforming, primary residence or accessory structure up to 150 square feet in order to accommodate an ADU. Language was added to Section 4.20.110(C) to permit the 150-foot expansion to accommodate an ADU or JADU, so long as the expansion does not result in a greater setback encroachment.

5. Height Standards: State law requires a minimum height limitation for an ADU to be no less than 16 ft. in height. The Department has accordingly amended the ADU height regulations to require an ADU to be no more than 16 feet in height. As an incentive to develop an ADU that is farther away from rear and side yard property lines, the Department has proposed amendments that allow an ADU to be taller than 16 ft. and as tall as the primary residence if it is built in compliance with residential setbacks. This would be consistent with the County's current Zoning Ordinance and State Law.

Rental of ADU: Leasing or renting any type of ADU for durations of less than 30 days, is prohibited, per the new State laws. Zoning Ordinance Section 4.10.015(B)(5) includes a provision for this standard.

Owner-Occupancy: Existing County ordinance requires that either the primary residence or the ADU be owner-occupied and an owner occupancy deed restriction is required to be recorded against the property. The new State law temporarily removes the owner occupancy requirement for properties with ADUs for a period of five years, up until January 1, 2025. It is unknown if the State will continue the removal of the owner occupancy requirements after 2025. As such, the Department has amended the ordinance to remove the owner occupancy requirement for Standard ADUs indefinitely, without a sunset date.

With regard to Junior ADUs, the State *requires* owner occupancy for one of the dwelling units on the property. Please refer to Attachment E, Section 4.10.015(F)(4), for the JADU owner occupancy requirement.

Maximum Floor Area for Attached ADUs: State law mandates that the square footage of an ADU that is attached to a primary dwelling shall not exceed 50% of the legally established floor area of the primary dwelling, or 1,200 sq. ft., whichever is less. However, State Law also requires that all ADUs have a floor area of 800 sq. ft. The proposed Zoning amendments incorporate these provisions. Examples of allowed ADU sizes are provided below:

- A 2,000 sq. ft. primary single-family residence would be permitted to construct a 1,000 sq. ft. attached ADU.
- A 6,000 sq. ft. primary single-family residence would be permitted to construct a 1,200 sq. ft. attached ADU.
- A 1,000 sq. ft. primary single-family residence would be permitted to construct a 800 sq. ft. attached ADU.

Please refer to Attachment E, Section 4.10.015(C).

Parking: County code provisions currently require two parking stalls for a main residence (one covered, one uncovered) and the replacement of any parking stall that is removed as a result of the development of an ADU. The new State law mandates that parking stalls removed as a result of the development of an ADU do not have to be replaced (Attachment E, Sections 4.10.015(I) and Table 4.30-1 of Section 4.30.030).

FINDINGS FOR CONSIDERING ZONING ORDINANCE AMENDMENTS

Pursuant to §5.75.040 of the Zoning Ordinance, “*the proposed amendments must be consistent with state law, the general purposes of the zoning ordinance and the general plan, and the land use designations in the general plan.*” The proposed revisions are intended to maintain consistency with State law. The project would not conflict with the general purpose of the Zoning Ordinance. The proposed amendments are consistent with the goals of the County’s General Plan, as they promote ADUs as an important form of affordable housing. The changes provide additional housing supply and remove regulatory burdens to this form of housing development, consistent with the goals of the County’s Housing Element (General Plan policy 1.1)¹. State law also declares that an ADU that conforms to State law shall be deemed a residential use that does not exceed the allowable density and is consistent with the existing general plan and zoning designations for the lot.

California Environmental Quality Act (CEQA)

The Zoning Text Amendments for ADUs are Statutorily Exempt from CEQA, pursuant to Public Resource Code Section 21080.17. This section of the Public Resources Code exempts the adoption of an ordinance by the County to implement the provision of Section 65852.2 of the Government Code, relating to the ADUs.

ADDITIONAL INFORMATION

In addition to the County’s Zoning Ordinance amendments, additional requirements by State law include the following:

¹ Santa Clara County General Plan Policy 1.1 “*An adequate supply of decent, affordable, and appropriately located housing designed to meet the varied lifestyles and income levels of the county’s diverse households*”.

1. Re-build allowances: For the purposes of conversions, in accordance with State law, a legally constructed structure can be demolished and re-built in the same location, with the same building footprint, as long as it is for the development of an ADU. A 150 sq. ft. addition is allowed to be constructed in addition to the conversion.
2. Multi-family Dwellings: State law requires that multi-family dwellings be allowed to have ADUs. At least one ADU may be attached within an existing multifamily dwelling structure. Additional attached ADUs may be permitted, provided no more than 25% of the existing multifamily dwelling units are added. If the ADU is detached from the multi-family structure, no more than two ADUs are permitted.
3. Code Enforcement: SB 13 allows homeowners to request a delay in compliance with certain building code violations related to ADUs for up to five years if correcting the violation is not necessary to protect health and safety. Examples of health and safety concerns include, but are not limited to, adequate sanitation facilities, means of emergency egress, heating facilities, potable water, cooking facilities, exterior/interior structural or other hazards, connection to sewage disposal systems, and hazardous electrical equipment wiring.
4. Building Permit Processing times: Current County Ordinance Code requires permit applications with the Building Division for ADUs to be acted upon within 120 days of submittal. State law now mandates this timeline be reduced to 60 days. County Planning staff is implementing this requirement in close consultation with the Building Division and has incorporated this processing time requirement into Section 4.10.015(B)(2) of the Ordinance (please refer to Attachment A). However, if an ADU is proposed in conjunction with a discretionary permit, it shall be subject to the timelines mandated by the discretionary permit. For example, if there is no existing primary residence on the property, no ADU would be permitted until all applicable permits and approvals (e.g., building site approval) were issued for the primary residence.

CHILD IMPACT

The recommended action will have no/neutral impact on children and youth.

SENIOR IMPACT

The recommended action will have no/neutral impact on seniors.

SUSTAINABILITY IMPLICATIONS

The recommended action will have no/neutral sustainability implications.

BACKGROUND

Public Outreach and Comments

The proposed Zoning text amendments have been noticed in accordance with applicable standards. The amendments were posted on the Department of Planning and Development website, and a courtesy notice has been provided to interested parties (Applicants' Roundtable distribution list) and known neighborhood groups in the unincorporated areas. Additionally, courtesy notices were posted on the County's Nextdoor and Facebook social media pages. In addition to noticing these changes, an informational flyer was posted on the Department of Planning and Development website on December 31, 2019 (Attachment B).

As required by law, a public notice was published in the San Jose Post-Record on January 27, 2020.

Planning Commission and San Martin Planning Advisory Committee Review

The proposed amendments were reviewed by the San Martin Planning Commission Advisory Committee (SMPAC) and Planning Commission at their January 22, 2020 and January 23, 2020 meetings, respectively.

The SMPAC forwarded a favorable recommendation of all amendments, with the exception of excluding movable tiny homes. The Committee also made a motion to clarify that SMPAC is not rejecting the potential for movable tiny homes but is instead requesting that additional research and analysis of various issues be more thoroughly vetted.

The issues SMPAC raised concerning movable tiny homes include, but are not limited to, compatibility and architectural design, property taxation, similarities between movable tiny homes and Recreational Vehicles (RV) with the DMV, requiring no on-street parking to preserve County maintained Roads, a clearer definition of movable tiny homes, concerns with addresses and mail services, more public outreach, and concerns with water assessment fees from the Santa Clara Valley Water District.

The Planning Commission provided a favorable recommendation of all amendments, with the exception of removing the movable tiny home highway restriction, and further clarifying that movable tiny homes are not RVs or travel trailers/campers. These recommendations have been incorporated into Ordinance that is being presented to the Board.

CONSEQUENCES OF NEGATIVE ACTION

If the Board does not take action on the proposed amendments related to Standard ADUs and Junior ADUs, then portions of the County Zoning Ordinance will not be in accordance with Government Code Sections 65852.2 and 65852.22. If a permit application to create an Accessory Dwelling Unit is received by the County, the County will be required to approve

or disapprove the application ministerially without discretionary review pursuant to Government Code Subdivision 65852.2 within 60 days of receiving a completed application.

Should the Board not wish to implement an Ordinance that includes movable tiny homes at this time, staff has provided an additional draft Ordinance for adoption that excludes movable tiny homes. Please refer to Attachment F.

STEPS FOLLOWING APPROVAL

Upon priority processing, the clerk of the Board will notify Leza Mikhail in the Department of Planning and Development and provide electronic documents with final signatures and adoption dates for inclusion in the Planning Division files. These amendments will take effect 30 days after approval by the Board.

LINKS:

- **Linked From:** 100188 : Public hearing to consider an Ordinance amending various sections of County of Santa Clara Ordinance Code Appendix I, Zoning, for the purpose of regulating Accessory Dwelling Units and Junior Accessory Dwelling Units in accordance with State law, including an option that allows Movable Tiny Homes to further address the regional housing shortage. The Ordinance is statutorily exempt from the California Environmental Quality Act pursuant to Public Resources Code section 21080.17, which exempts the adoption of an ordinance implementing the State law requirements relating to Accessory Dwelling Units. Location: Countywide. (File No.: PLN20-001) (Supervisory District: All)
- **References:** 100092 : Consider recommendations relating to Accessory Dwelling Units (ADUs) and Moveable Tiny Homes. (Cortese)
- **Referenced By:** 100503 : Under advisement from February 11, 2020 (Item No. 8): Consider recommendations from the Department of Planning and Development relating to proposed Zoning Ordinance Amendments concerning Accessory Dwelling Units, Junior Accessory Dwelling Units, and Movable Tiny Homes.
- **Linked From:** 100506 : Public hearing to consider modifications to an Ordinance, originally considered by the Commission on January 23, 2020, amending various sections of County of Santa Clara Ordinance Code Appendix I (Zoning) for the purpose of regulating Accessory Dwelling Units (ADUs) in accordance with State law, including Junior Accessory Dwelling Units (JADUs) and Movable Tiny Homes. California Environmental Quality Act (CEQA): Statutorily exempt pursuant to California Public Resources Code Section 21080.17 and Section 15282(h) of the CEQA Guidelines. Location: Countywide. Supervisory District: All. File No.: PLN20-001.

ATTACHMENTS:

- Attachment A - Proposed Public Handout for ADUs (PDF)
- Attachment B - State Law Section 65852.2 (ADU) (PDF)
- Attachment C - State Law Section 65852.22 (JADU) (PDF)
- Attachment D - Staff-proposed ADU Ordinance Strike-through (PDF)
- Attachment E - Staff-proposed ADU Ordinance Clean (PDF)
- Attachment F - Alternative ADU Ordinance without Movable Tiny Homes (PDF)