

Attachment A:
ADU-RELATED PLANNING CODE AMENDMENTS

The Oakland Planning Code (Title 17 of the Oakland Municipal Code) is proposed to be amended as follows. Additions are shown in underline and deletions are shown in ~~striketrough~~. Note that only the relevant code subsections being amended are included and unamended portions of tables are omitted.

Chapter 17.103 SPECIAL REGULATIONS AND FINDINGS FOR CERTAIN USE CLASSIFICATIONS

Article VI - Residential Facilities

Sections:

17.103.080 Accessory Dwelling Units in conjunction with One-Family, Two- to Four-Family, and Multifamily Dwelling Residential Facilities.

17.103.080 Accessory Dwelling Units in conjunction with One-Family, Two- to Four-Family, and Multifamily Dwelling Residential Facilities.

The following regulations shall apply to the construction, establishment, or alteration of Accessory Dwelling Units (ADUs), as those dwelling unit types are defined in Chapter 17.09:

A. Regulations Applying to All Accessory Dwelling Units.

1. **Ministerial Approval.** An application for an Accessory Dwelling Unit (ADU) shall be granted ministerial approval when it complies with all applicable zoning regulations, including but not limited to all provisions in this Section (17.103.080) and in Planning Code Chapter 17.88, unless the application is part of a proposal that separately requires discretionary review; in which case, the review time for the ADU application can be extended to coincide with the review time of the associated discretionary permit.
2. **No Short-Term Rental of ADUs.** Rental of an ADU shall only be for a term of longer than thirty (30) consecutive days.
3. **Sale of Unit.** An Accessory Dwelling Unit shall not be sold separately from the primary Residential Facility on the same lot unless otherwise permitted under State law, and except for under the provisions outlined in Government Code section 65852.26.
4. **Replacement Parking Configuration.** If a covered or uncovered parking space is removed to construct an Accessory Dwelling Unit, no replacement parking is required. ~~For this section to apply, the applicable covered parking structure must have a solid roof, supported with columns, and must be legally existing. Uncovered parking spaces that are required for the primary~~

~~Residential Facility in the underlying zone must be maintained or replaced, subject to the location and paving restrictions set forth in the Oakland Planning Code. Required replacement parking spaces may be tandem, as set forth in Section 17.116.240.A.~~

5. **Compliance with all Code and Permit Requirements Imposed by other Applicable City Departments.** Unless specified otherwise in local code or State law, an Accessory Dwelling Unit shall comply with all code and permit requirements imposed by other applicable City departments, including but not limited to the requirement for a building permit.
6. **Permitted Locations for ADUs.** Subject to restrictions set forth in Chapter 17.88 and Section 17.103.080(A)(8) of this Chapter, ADUs are permitted on lots in zoning districts that permit Permanent Residential Activities, and in conjunction with an existing or proposed primary Residential Facility.
7. **Restriction of ADUs in Certain Locations Based on Traffic Flow and Public Safety.**

See Chapter 17.88 for limitations on ADUs in the S-9 Fire Safety Protection Combining Zone.

Development of ADUs is restricted with certain exceptions specified in Chapter 17.88 to one (1) interior conversion Category One ADU within the existing envelope of a primary structure or one (1) Junior Accessory Dwelling Unit (Junior ADU or JADU) per One-Family, Two- to Four-Family, or Multifamily lot. See the S-9 Fire Safety Protection Combining Zone Map Overlay ("Overlay Zone") Map to determine if the lot where the ADU is proposed is within the S-9 Zone.

8. **Kitchens.** Each ADU and JADU shall have a kitchen that is independent from the primary Residential Facility, and includes all of the following: a sink, cooking facility with appliances, a food preparation counter and storage cabinets that are of a reasonable size in relation to the size of the dwelling unit. A JADU is required to contain at least an efficiency kitchen, which shall include a cooking facility with appliances, and a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the JADU.
9. **Entrance for ADU and JADU.** A separate exterior entrance that is independent from the primary Residential Facility is required for each ADU and JADU. An exterior stairway proposed to serve an ADU or JADU on a second story or higher shall not be visible from the front public right-of-way.
10. **Objective Design Standards for Properties Listed in the California Register of Historic Resources.**
 - a. Attached and detached Category Two and/or converted Category One ADUs located at the front or side of a main building and visible from the front public right-of-way shall incorporate the same roof pitch, visually matching exterior wall material, and predominant door and window trim, sill, recess, and style as the primary dwelling structure, with an option of approving different finishes or styles through the Small Project Design Review process as set forth in Section 17.136.030. ADUs of these types that are located to the rear of a main building are not subject

to this design standard or alternative review process.

- b. Attached or detached garages located to the front or side of a main building and converted to ADUs shall replace the garage doors with visually similar exterior wall materials and door and window trim as the primary Residential Facility, with an option of approving different finishes or styles through the Small Project Design Review process as set forth in Section 17.136.030. Attached or detached garages located to the rear of a main building and converted to ADUs are not subject to this design standard or alternative review process.
 - c. This subsection 10 (ten) does not apply to ADUs built pursuant to CA Government Code § 66323.
11. **Balconies and Decks.** Category Two ADUs and Category One ADU conversions that include expansion of existing building envelope shall not contain upper story balconies, decks, or rooftop terraces if the proposed elements do not meet the established requirements of the underlying zone.
 12. **California Register Properties.** For ADUs proposed for a California Register Property, the following shall apply:
 - a. Placement of an ADU in front of a main building on a California Register Property is only allowed if the lot conditions or requirements preclude an ADU of a minimum allowed size (established by Tables 17.103.01 and 17.103.02) anywhere else on the lot.
 - b. Any new attached or detached ADU on a California Register Property shall be located in the following order of preference:
 - i. First, behind the main structure;
 - ii. Next, to the side of the main structure;
 - iii. Last, in front of the main building.
 - c. A consultation with Historic Preservation Staff is required for Category One and/or Category Two ADUs on a California Register Property visible from the public right-of-way. Such consultation shall not preclude the need for ministerial approval of an ADU that meets the standards of Government Code section 65852.2(e). The Planning Director or his or her designee is authorized to develop objective design standards for the development of ADUs in historic districts or on California Register Property to ensure preservation of historic resources.
 13. **Planned Unit Developments (PUDs).** ADUs proposed on Planned Unit Developments (PUDs) must comply with requirements of Chapter 17.142 and Section 17.103.080.
 14. **Planning Code Amnesty and Enforcement Delay of Building Code for ADUs that Do Not Have Prior Planning or Building Approval.**
 - a. Existing Accessory Dwelling Units built and occupied without prior Planning or Building approval shall be referred to in this section as "Unpermitted Accessory Dwelling Units."
 - b. The owner of an Unpermitted Accessory Dwelling Unit has a right to request: (1) amnesty from any violation of a zoning standard under the

Planning Code if the Unpermitted Accessory Dwelling Unit was established and occupied prior to January 1, 2021; and (2) delay in enforcement of the Building Code, and local amendments thereof, as adopted under O.M.C. Title 15 if the Unpermitted Accessory Dwelling Unit was built prior to the effective date of this Section.

- c. The Planning Code amnesty and enforcement delay programs provided in this Section are available to any property owner whose Unpermitted Accessory Dwelling Unit meets the program requirements provided within this Section. The City shall not deny a permit for an unpermitted ADU that was constructed prior to January 1, 2021 due to either of the following: (1) the ADU is in violation of the building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code, or (2) the ADU does not comply with Section 65852.2 or any local ordinance regulating ADUs. However, a local agency may deny a permit for an Accessory Dwelling Unit if the local agency makes a finding that correcting the violation is necessary to protect the health and safety of the public or occupants of the structure.
- d. Until January 1, 2030, any notice to correct a violation of any provision of the Planning or Building Code building standards pursuant to Oakland Municipal Code (O.M.C.) Titles 15 or 17 that is issued to an owner of an Unpermitted Accessory Dwelling Unit built before the effective date of this Section shall contain a statement that the owner of the Unpermitted Accessory Dwelling Unit has a right to request: (1) amnesty from any violation of a zoning standard under the Planning Code that would preclude the preservation of an Unpermitted Accessory Dwelling Unit that was established and occupied prior to January 1, 2021; and (2) delay in enforcement of the Building Code, and local amendments thereof, as adopted under O.M.C. Title 15 if the Unpermitted Accessory Dwelling Unit was built prior to the effective date of this Section. Said notice shall also inform the owner that any penalties arising out of any zoning or building violations shall be waived leading up to the zoning amnesty and during the term of the Building Code enforcement delay. The applicant shall bear the burden of proof in establishing the date when the Unpermitted Accessory Dwelling Unit was established and occupied for the Planning Code amnesty program, or when the building was built for the Building Code enforcement delay.
- e. The owner of an Unpermitted Accessory Dwelling Unit that can provide suitable proof that said unit was established and occupied prior to January 1, 2021 may, in the form and manner prescribed by the Planning and Building Director or his or her designee, submit an application to the Planning and Building Director or his or her designee requesting that the Unpermitted Accessory Dwelling Unit obtain amnesty from any violation of the City's zoning standards that would preclude the preservation of the Unpermitted Accessory Dwelling Unit. In addition, the owner of said unit may also request delay in enforcement of a Building Code violation if the Unpermitted Accessory Dwelling Unit was built prior to the effective date of this Section. The Building Code enforcement delay shall be for a period of no more than five (5) years on

the basis that correcting the violation is not necessary to protect the public health and safety.

- f. The applicant’s amnesty request to resolve violations of zoning standards shall be processed as specified in Planning Code Chapter 17.136, but shall not be available to Unpermitted Accessory Dwelling Units: (1) that are located in the City’s S-9 Zone; or (2) where the owner cannot establish that the Unpermitted Accessory Dwelling Unit was established and occupied prior to January 1, 2021.
- g. The Planning and Building Director or his or her designee shall grant the owner’s Building Code enforcement delay request if the Planning and Building Director or his or her designee determines that correcting the Building Code violation is not necessary to protect the public health and safety. In making this determination, the Planning and Building Director or his or her designee shall consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal pursuant to Government Code Section 13146.
- h. Any Building Code enforcement delay shall remain in effect no later than January 1, 2035, and as of that date is repealed.

Table 17.103.02: Property Development Standards applying to Two- to Four-Family and Multifamily ADUs

Development Standards	Types of Two- to Four-Family and Multifamily ADUs			Notes
	Category 1 ADU for Existing Two- to Four-Family and Multifamily Buildings	Category 2 ADU for Existing and Proposed Two- to-Four-Family and Multifamily Buildings	Category 3 ADU for Existing and Proposed Two- to-Four-Family and Multifamily Buildings	
Maximum Number	1 or up to 25% of existing units, whichever is greater, per Two- to Four-Family or Multifamily Facility. For the purposes of the 25% limitation, a unit is considered existing if it has received its certificate of occupancy.	<u>Existing multifamily building</u> : No more than <u>2</u> per lot. <u>Proposed multifamily building</u> : No more than <u>2</u> per lot.	Only 1 per lot.	1, 2, 3
Minimum Size (Floor Area)	Must meet, at a minimum, Efficiency Unit Building Code Standards.			3-4

Maximum Size	For Interior Conversion: size is limited by the existing building envelope.	N/A.	850 sf. for studio or one-bedroom; 1,000 sf. for 2-bedrooms or more	4 <u>5</u>
Maximum Height	Established by the base zone.	The height shall not exceed 18 feet unless the ADU meets the setback requirements of the underlying zone. In this case, the maximum height is established by the base zone.	Established by the base zone.	5 <u>6</u>
Side and Rear Setbacks	4 feet, or the regularly required setback, whichever is less, but in no case shall be less than 3 feet from the side or rear lot line. For Internal: N/A.		5 <u>6</u>	

Development Standards	Types of Two- to Four-Family and Multifamily ADUs			Notes
	Category 1 ADU for Existing Two- to Four-Family and Multifamily Buildings	Category 2 ADU for Existing and Proposed Two- to-Four-Family and Multifamily Buildings	Category 3 ADU for Existing and Proposed Two- to-Four-Family and Multifamily Buildings	
Lot Coverage, Rear Setback Coverage	N/A.	New ADUs must be consistent with the regulations contained in the underlying zone, except up to two ADUs are permitted if they do not exceed 800 sf each shall be permitted regardless of these requirements.	N/A.	§ 6
Front Setback	N/A.	Established by the base zone, except if lot conditions preclude creating no more than two ADUs and no more than 18 feet in height anywhere else on the lot.	Established by the base zone, except to create one ADU of no more than 850 sf. for studio or one-bedroom; 1,000 sf. for 2-bedrooms or more.	
Floor Area Ratio (FAR)	N/A.	New ADUs must be consistent with the regulations contained in the underlying zoning district, except to establish no more than two ADUs.	Must be consistent with the regulations contained in the underlying zoning district, except to establish one ADU of no more than 850 sf. for studio or one-bedroom; 1,000 sf. for 2-bedrooms or more.	§ 6

Development Standards	Types of Two- to Four-Family and Multifamily ADUs			Notes
	Category 1 ADU for Existing Two- to Four-Family and Multifamily Buildings	Category 2 ADU for Existing and Proposed Two- to-Four-Family and Multifamily Buildings	Category 3 ADU for Existing and Proposed Two- to-Four-Family and Multifamily Buildings	
Open Space	N/A.	No new open space required. However, required open space for existing units, as established by base zone, must be maintained, except to establish no more than two ADUs.	No new open space required. However, required open space for existing units, as established by the base zone must be maintained, except to establish one ADU of no more than 850 sf. in total footprint for studio or one-bedroom; 1,000 sf. for 2-bedrooms or more.	
Parking for ADUs	One (1) space; OR none if located: a) within ½-mile walking distance of public transit stop; b) on any lot within a City of Oakland Area of Primary Importance (API) or Secondary Importance (ASI), as defined in the General Plan’s Historic Preservation Element; c) in areas where parking permits are required but not offered to occupants of ADUs; d) where there is a carshare vehicle within one block of the ADU; or e) when the ADU is part of the proposed or existing primary residence or an accessory structure.			67
Owner Occupancy	Not required.			
Bathroom	Each unit must have a private bathroom.			

Notes for Table 17.103.02:

1. On a lot with an existing multifamily dwelling, the total number of ADUs is not more than eight (8), but ADUs must not outnumber the number of units in the main building.
2. 4. All calculations that result in a fractional number shall be rounded up to the nearest whole number. A lot may contain both Category One and Category Two ADUs.
3. ~~2.~~ For Category 1 ADUs, ~~Non-habitable~~ or non-livable space does not include detached accessory structures, existing residential units, commercial space, ~~community rooms, gyms,~~ laundry rooms or any other finished spaces that are meant to be occupied by people and used communally.
4. ~~3.~~ At least a minimum square footage that permits an Efficiency Dwelling Unit as

defined in Chapter 17.09 and in the California Building Code.

5. ~~4.~~ Category Two ADUs must meet lot coverage and open space requirements set forth in this table.

6. ~~5.~~ Two- to Four-Family and Multifamily Category One ADUs are allowed even if the existing space to be converted or rebuilt does not meet the underlying zone's current development standards, such as height limits, floor area ratios, lot coverage or setbacks. This allowance is only for ADUs located behind the primary building in its rear yard. If Category Two ADU is proposed in front or side of a primary structure the maximum height is sixteen (16) feet. Notwithstanding, in the S-9 Zone, maximum ADU height is capped at sixteen (16) feet.

7. ~~6.~~ For replacement parking regulations, see 17.103.080(A)(4).

(Ord. No. 13172, § 3(Exh. A), 7-2-2013)