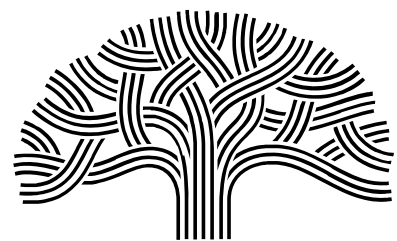


Accessory Dwelling Unit (ADU) Code Update

**Presentation to the Planning
Commission**

April 3, 2024

Planning and Building Department



**CITY OF
OAKLAND**



Agenda

- Proposed ADU Code Amendments
- Proposed Miscellaneous and “Clean-Up” Amendments
- Next Steps

Proposed ADU Code Amendments

Previous ADU Work

- **June and September 2021** – Staff brought ADU code changes to Planning Commission
- **January 18, 2022** – Oakland adopted Accessory Dwelling Unit (ADU) Ordinance No. 13367
- **July 5, 2023** – State Housing and Community Development (HCD) sent technical assistance letter to PBD
 - 23 findings of instances where Ordinance was not in compliance with State Law or needed to be updated to address new changes to State Law
- **August 4, 2023** – Staff responded to State TA letter, addressing each of HCD's 23 comments

Review of HCD Comments

- 23 comments
 - Proposed amendments to ADU Ordinance address 19 comments
 - 4 comments where City has provided findings that the ADU Ordinance actually does comply with State Law
 - 3 comments have to do with limitations placed on ADUs in the S-9 Fire Safety Protection Combining Overlay Zone(S-9) to address public safety and emergency response
 - 1 comment on nuances of a definition
 - Findings will accompany the adoption Ordinance

Summary of HCD Comments Addressed

Comment # and Topic Area	Summary of Comment
2 – JADU Definition	JADUs must allow for the conversion of enclosed units within the residents, such as attached garages, as state in Government Code Section 65852.22, subdivision (a)(4).
3 – Additional Kitchen	The presence of an additional kitchen in a residential facility cannot preclude the ministerial approval of an ADU that conforms to Government Code Section 65852.2.
4 – Existing Primary Dwellings	The Ordinance fails to mention that ADUs are ministerially approved on proposed single-family dwellings and on both existing and proposed multifamily dwellings.
6 – Separate Sale	ADUs and JADUS may be sold separately under narrow exceptions outlined in Government Code Section 65852.26. The Ordinance must note this exception.

Summary of HCD Comments Addressed

Comment # and Topic Area	Summary of Comment
7 – Exterior Visibility	Exterior stairways that serve an ADU or JADU on a second story must not be visible from the front public right of way, only when feasible.
8 – Oakland Cultural Heritage Survey	The Ordinance creates special restrictions for ADUs in structures rated A, B, or C by the Oakland Cultural Heritage Survey. The City may only impose standards on ADUs for properties listed in the California Register of Historic Resources.
9 – Landscaping Standards	ADU approval cannot be contingent on planting trees. The City must remove the tree planting requirement from the Ordinance or clarify it as an incentive.
10 – Limited Amnesty Clause	The amnesty program detailed in the Ordinance has a narrower scope than state statute requires. An ADU permit may not be denied for units created prior to January 1, 2018, even if it conflicts with building code standards, local development standards, or Government Code Section 65852.2. (State law changed after 2022)

Summary of HCD Comments Addressed

Comment # and Topic Area	Summary of Comment
12 – Expiration Clause	The Ordinance’s amnesty clause has a condition for expiration when Government Code Section 65852.23 has no condition for expiration . (State law changed after 2022)
13 – Unit Mixture	Homeowners, who meets specified requirements, may create one (1) converted ADU, one (1) detached, new construction ADU, and one (1) JADU, in any order without prejudice, totaling three (3) units . The Ordinance must be revised to note this. (State law changed after 2022)
14 – Size Limitations	ADU size maximums do not apply to converted units and only new construction detached units have a discrete size limit. The Ordinance must be revised to note this.
15 – Height Limits	The Ordinance has height limits referenced throughout of sixteen feet for ADUs. State law allows maximum heights of 16, 18, and 25 feet, depending . Ordinance must be amended accordingly.

Summary of HCD Comments Addressed

Comment # and Topic Area	Summary of Comment
16 – Parking	The Ordinance must note that no parking may be required when the ADU is part of the proposed or exiting primary residence or an accessory structure.
17 – Owner Occupancy	The Ordinance must note that owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.
18 – Unit Mixture	The Ordinance states that a Category 3 ADU precludes creation of any other ADU. Prior existence of an attached new-construction Category 3 ADU cannot preclude the development of a Category 1 or Category 2 ADU, and the Ordinance must be revised to note this.
19 – Ingress	ADUs are allowed 150 sf. to accommodate ingress and egress and such expansions are not dependent on the size of the unit. The Ordinance must be revised to note this.

Summary of HCD Comments Addressed

Comment # and Topic Area	Summary of Comment
20 – Maximum Size	No size maximums apply to any converted or detached unit with a multifamily primary dwelling. The Ordinance must be updated to reflect that.
21 – Front Setbacks	The absence of alternative siting cannot be a prerequisite for allowing an ADU in the front setback. The Ordinance must remove this prerequisite.
22 – Lot Coverage, FAR, and Open Space	Lot Coverage, FAR, and Open Space requirements may not preclude development of ADUs subject to Government Code section 65852.2, subdivision (e), which includes all conversions, JADUs, new construction detached units up to 800 square feet with single-family primary dwellings, and up to two detached units with multifamily dwellings. The Ordinance must be revised to reflect this.

Summary of HCD Comments Not Addressed

Comment # and Topic Area	Summary of Comment	Summary of Finding
1 – ADUS in VHFHSZ	<p>The City did not provide enough data for State HCD to understand why the Ordinance limits new ADUS in the Very High Fire Hazard Severity Zone (VHFHSZ). The City may not justify a restriction on ADUs in the VHFHSZ, such as exists in Sections 17.88.050 (A)(1), (A)(2) and (A)(3), under Government Code Section 65852.2, subdivision (e).</p>	<p>No changes were made due to emergency evacuation and public safety concerns, which have been adequately documented by Oakland Fire Dept. and other agencies with expertise on the issue of evacuation. Additional findings have been written to provide more data for State HCD. See Finding 1 under Staff Findings.</p>

Findings for ADUs in the S-9 Overlay Zone

- Housing density in the S-9 creates **unique public safety challenges** in the event of an **emergency evacuation or ambulance/fire response**.
- Models and consultation with technical experts warn that increased density in S-9 exacerbates an already **unsatiable evacuation scenario, increase wildfire risk, and decrease ability of City to provide adequate emergency response and evacuation** in those areas.
- **City has committed to wildfire and public emergency mitigation measures** that manage housing density through the Local Hazard Mitigation Plan, the recently adopted Safety Element, and City Council Resolution No. 87940 C.M.S.
- **By limiting ADU development to one ADU or JADU per lot in the S-9, the City heeds the recommendations and directions of local and regional planning experts and adheres to the mitigation measures to which we have committed**

Summary of HCD Comments Not Addressed

Comment # and Topic Area	Summary of Comment	Summary of Finding
5 – Fire Safety Parking Compromise	<p>A parking space may not be required under any circumstances for a JADU. City may not have alternative development standards that require parking for a JADU in the VHFHSZ.</p>	<p>No changes were made due to emergency evacuation and public safety concerns. Additional findings have been written to provide more data for State HCD. See Finding 2 under Staff Findings.</p>
11 – Amnesty Clause & S-9	<p>The Ordinance exempts units built in the S-9 Overlay Zone from the amnesty program which exceeds state statute.</p>	<p>No changes were made due to public safety concerns. Additional findings have been written to provide more data for State HCD. See Finding 3 under Staff Findings.</p>

Findings for Requiring Parking for JADUs in the S-9

- Managing street parking is an important piece of the fire safety efforts in S-9 but **enforcement continues to be a challenge** even where no-parking rules are in place
- Increasing number of vehicles in S-9, w/o requiring off-street parking leaves people to park on narrow, substandard roads, **exacerbating emergency response and congestion during evacuation situations and emergencies**
- Fire Department has weighed in on ongoing **illegally parked vehicles interfering with fire response time and operational procedures** and increasing risk to both residents and respondents, as well as threat to property
- **State law permits local agencies to make life safety findings under Government Code section 65852.23 to require parking for ADUs**

Findings for Amnesty Clause & S-9

- For all of the reasons already discussed in the previous slides, the City has concerns about the life safety of occupants in the S-9, in terms of:
 - 1) the ability to evacuate from the area in an emergency and access for emergency response services to reach residents
 - 2) provision and maintenance of defensible space and building separations
 - 3) building standards related to fire and life safety.
- **State law permits local agencies to make life safety findings under Government Code section 65852.23 that would make an ADU ineligible for the Amnesty Program**

Summary of HCD Comments *Not Addressed*

Comment # and Topic Area	Summary of Comment	Summary of Finding
23 – Nonhabitable Space Definition	Nonhabitable space is defined much more broadly in Government Code Section 65852.2, subdivision (e)(1)(C) than in the Ordinance. The Ordinance’s definition includes the condition “any other finished spaces that are meant to be occupied by people.” This is potentially restrictive, and the Ordinance must remove that condition.	No changes due to definitions being aligned. See Finding 4 under Staff Findings.

Findings for Non-habitable Space Definition

- In Oakland, **tenant protection is a high priority** and is another means of addressing lack of housing affordability.
- The City has an interest in ensuring that property owners do not attempt to constructively evict tenants by removing important tenant amenities, such as laundry rooms, gyms, and other finished room amenities.
- **None of these finished room spaces are mentioned in the “class” of examples provided**, City staff believe Oakland's definition of non-habitable space is in line with the intent of State law.
- **Since the State law is not that broad, the legislature appears to have intended to limit it to a class of unfinished spaces.**

Proposed Miscellaneous and Clean-Up Code Amendments

Previous Related Zoning Amendments

- **October 2023** – City adopted an extensive packet of zoning amendments related to Phase 1 of General Plan Update
 - Implements actions in recently adopted Housing, Environmental Justice, and Safety Elements
- Proposed amendments further clarify, and support of amendments adopted in October 2023

Summary of Changes Made

Chapter and Section	Summary of Proposed Changes
Chapter 17.76 S-2 Civic Center Commercial Zone Regulations, Section 17.76.200	Changes to note that management units are excluded from the count for 100% affordable developments.
Chapter 17.97 S-15 Transit-Oriented Development Commercial Zones Regulations, Section 17.97.040	Changes to permitted and conditionally permitted facilities.
Chapter 17.97 S-15 Transit-Oriented Development Commercial Zones Regulations, Section 17.97.070	Changes to height areas and maximum residential densities to be consistent with changes to the General Plan text and maps made in September 2023.
Chapter 17.116 Off-Street Parking and Loading Requirements, Section 17.116.240	Changes to allow tandem parking requirements for ADUs and for 50% of the required parking spaces for Two-to-four Family Residential Facilities. These changes further clarify code amendments that were adopted in October 2023.

Summary of Changes Made

Chapter and Section	Summary of Proposed Changes
Chapter 17.136 Design Review Procedure, Section 17.136.025	Exempt certain microwave and satellite dish additions from design review and eliminate the Tract 3 Small Project Design Review procedure. These changes are in support of the code amendments adopted in October 2023 to streamline the development review process for small projects and improve the City’s ability to improve more complex projects, such as housing.
Chapter 17.136 Design Review Procedure, Section 17.136.030	Update definition of “Small Project” to include creation of new living units entirely within an existing building envelope. This change is in support of the code amendments adopted in October 2023 to streamline the development review process for small projects and improve the City’s ability to improve more complex projects, such as housing.

Summary of Changes Made

Chapter and Section	Summary of Proposed Changes
Chapter 17.136 Design Review Procedure, Section 17.136.040	Create ministerial approval for additional units within an existing building envelope.
Chapter 17.101H D-CO Coliseum Area District Zones Regulations, Section 17.101H.040	Allow General Advertising signs in the D-CO-2 Zone if they are associated with naming rights and/or sponsorships related to stadiums and performance venues.

Next Steps

Tentative Dates of Council Meetings

- **May 28, 2024** – Community Economic Development (CED) Meeting
- **June 4, 2024** – City Council (First Reading)
- **June 18, 2024** – City Council (Second Reading)