



Agenda Item

Planning Commission

Item #: 4.1.

5/6/2024

File #: 24-0287

TO: Chair and Members of the Planning Commission

THRU: Anna Pehoushek, Assistant Community Development Director

FROM: Arlen Beck, Associate Planner

1. SUBJECT

Accessory Dwelling Unit Ordinance Update (Continued from April 15, 2024).

2. SUMMARY

An update to the City's existing Accessory Dwelling Unit Ordinance in response to changes in state law and guidance from the Department of Housing and Community Development, and a finding of CEQA exemption.

3. RECOMMENDED ACTION

Adopt Planning Commission Resolution No. PC 14-24 entitled:

A Resolution of the Planning Commission of the City of Orange recommending that the City Council adopt an ordinance updating accessory dwelling unit provisions of the Orange Municipal Code in response to changes in state law and guidance from the Department of Housing and Community Development.

4. AUTHORIZING GUIDELINES

Orange Municipal Code (OMC) Section 17.08.020 authorizes the Planning Commission to review and make advisory recommendations to the City Council on Zoning Ordinance Amendments.

5. PROJECT BACKGROUND

The City of Orange has regulated accessory dwelling units (ADUs), previously known as "granny flats" or "second units" for thirty years. The law has evolved in order to increase the number of ADUs available in the housing market. The City has made numerous changes to its ADU ordinance over the years, summarized below:

In May 2003, in response to changes in state law, the City Council adopted Ordinance No. 8-03 to allow ministerial approval of an ADU of a minimum of 450 sq. ft. and a maximum of 640 sq. ft. in residential zoning districts provided that the lot was occupied by only a single-family residence.

In 2016, state ADU law was again amended to streamline the ADU approval process. The following year, in February 2017 the City Council adopted Ordinance No. 02-17 to again meet the requirements of state law. Key OMC updates at that time included: providing for efficiency units, adding restrictions pertaining to fire safety, adding water connection fee restrictions, clarifying OMC

provisions pertaining to setbacks and separation requirements, and adding more parking exemptions.

On April 13, 2021, the City Council adopted Ordinance No. 03-21, further amending and making clarifying changes to the OMC related to ADUs, to comply with updates to state law. Key OMC updates at that time included: allowing both an ADU and a Junior Accessory Dwelling Unit (JADU), allowing garage conversions, allowing ADUs in existing buildings, and allowing up to 1,000 sq. ft. ADUs.

On January 1, 2023, new laws became effective which required updates to the City’s Municipal Code. Additionally, in the process of reviewing the City’s Housing Element, the State of California Department of Housing and Community Development (HCD) provided comments on the City’s ADU ordinance.

The 2023 state laws primarily changed the following:

- Allow for additional height for some ADUs
- Allow for ADU construction in front yard setbacks

HCD’s comments on the City’s ADU ordinance include the following:

- OMC Section 17.29.040.A.3.a. requires existing regulations pertaining to the sink, cooking appliance and refrigeration facilities to be removed.
- OMC Section 17.29.110 A. cannot restrict number of bedrooms.
- OMC Section 17.29.110 B. may not apply local design guidelines like a common living area requirement to units created.

6. PROJECT DESCRIPTION

The proposed ordinance brings the OMC into compliance with state law, while retaining those regulations allowed by the law. It also makes further clarifications consistent with state law to provide protections for neighborhood character and quality of life in Orange.

Current State law Compared with Proposed Ordinance

The following chart shows the mandatory provisions of the 2023 state law.

ADU Criteria	New Regulation Under State ADU Law as Enacted
Location of ADUs	ADUs are allowed in front yard setbacks. Front setback requirements cannot be used to prohibit ADU construction where there is no other alternative to allow for construction of an 800 square foot ADU that meets height limits and complies with the four-foot side and rear yard setback requirements.

Height	An attached ADU may be up to 25 feet tall or the maximum height of the primary dwelling allowed under the underlying zoning designation, but not to exceed two stories. A detached ADU may be up to 18 feet tall if located within a half-mile of a major transit stop or high quality transit corridor as defined by state law, or up to 20 feet high if necessary to match the roof pitch of the ADU to that of the primary unit. Detached ADU up to 18 feet tall is allowed on lots with an existing or proposed Multi-family, multi-story residence.
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Implementation of HCD Required Amendments

The proposed ordinance also amends the City’s existing ordinance to implement HCD’s comment pertaining to removal of references to sinks, cooking appliances, refrigeration facilities, number of bedrooms, and common living area.

In addition to amendments required by state law and the guidance from HCD, the deed restriction requirement for ADUs has been removed because the prohibition of the separate sale of an ADU from the primary unit is contained in state law. A deed restriction for JADUs is still in place restricting the maximum size, and separate sale of the JADU from the primary unit, as specified in state law.

Clarifications

Finally, the draft ADU ordinance also clarifies allowable requirements pertaining to certain historic structures, reiterating current state law. For example, the City may apply design standards on ADUs to prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. The City may also apply, and has only applied, objective design and development standards to ADUs and JADUs. For purposes of further clarification, the proposed ordinance lists certain objective design standards explicitly from other provisions of the Municipal Code. A redlined copy of the proposed Ordinance is provided in Attachment 2.

7. ANALYSIS AND STATEMENT OF THE ISSUES

Issue 1: Preemption by State law

Local ordinance deviations are highly limited by state law. The changes made by this update to the ADU ordinance will implement changes required by state law and guidance from HCD. However, the ADU ordinance will continue to regulate ADU size, setback, height, and objective design review criteria, as allowed under the law.

Issue 2: ADUs Allowed in the Front Yard Setback Area

A front yard setback requirement cannot preclude an ADU of 800 square feet or less from being built. However, in historic districts, ADUs will not be allowed in front yard setbacks if it would cause adverse impacts on any real property that is listed in the California Register of Historical Resources.

Issue 3: ADU Height

As stated in the project description, state law now allows any attached ADU of 800 square feet or less to have a height of up to 25 feet or the same height as the underlying zoning designation, whichever is less, and no taller than two stories. Additionally, detached ADUs within one-half mile of a

major transit stop or transit corridor as defined by state law may now be up to 18 feet tall or 20 feet tall if needing to match the roof pitch of the principal residence. A major transit stop includes rail stations or bus routes with 15 minute or less bus stop intervals. Attachment 5 depicts areas qualifying for the additional detached ADU height.

8. PUBLIC NOTICE

On April 4, 2024, the City published notice of the Planning Commission public hearing in the Orange City News newspaper. Notification was also posted at City Hall and on the City website on that same date.

9. ENVIRONMENTAL REVIEW

Statutory Exemption: This ordinance is statutorily exempt under the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code Section 21080.17 and Title 14, California Code of Regulations Section 15282(h) which exempts adoption of an ordinance regarding second units to implement provisions of Sections 66310, et. seq. of the Government Code.

10. ADVISORY BOARD ACTION

No advisory board action was necessary for this ordinance. Staff recommends that the Planning Commission adopt Resolution No. PC 14-24.

11. ATTACHMENTS

- Attachment 1 Planning Commission Resolution No. PC 14-24 with proposed ADU Ordinance (Clean Copy)
- Attachment 2 Proposed ADU Ordinance - Redlined Copy
- Attachment 3 Government Code Section 66310 - 66339
- Attachment 4 City Council Ordinance No. 03-21 - Existing ADU Ordinance
- Attachment 5 Major Transit Stop Half Mile Buffer Map