

  
Brian Mulry (Oct 29, 2021 10:15 PDT)  
CITY ATTORNEY'S OFFICE

# OAKLAND CITY COUNCIL

## ORDINANCE NO. \_\_\_\_\_ C.M.S.

**AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, AMENDING THE OAKLAND PLANNING CODE TO: 1) REVISE REGULATIONS FOR ACCESSORY DWELLING UNITS (ADUS) AND JUNIOR ACCESSORY DWELLING UNITS (JADUS) TO COMPLY WITH STATE LAW; 2) AMEND THE S-9 ZONING OVERLAY ZONE THAT IDENTIFIES AREAS IN THE CITY WHERE ADUS ARE RESTRICTED TO ONE INTERNAL CONVERSION ADU OR JADU PER RESIDENTIAL LOT; 3) PROVIDE AN EXCEPTION MECHANISM FOR ALLOWING ATTACHED AND DETACHED ADUS IN THE S-9 ZONING OVERLAY ZONE; 4) PROVIDE ADDITIONAL WILDFIRE BUILDING PROTECTIONS IN S-9 ZONING OVERLAY ZONE; 5) MAKE CONFORMING CHANGES IN VARIOUS SECTIONS OF THE OAKLAND PLANNING CODE RELATED TO ADUS; AND 6) MAKE APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS.**

**WHEREAS**, housing in California is becoming increasingly unaffordable, which is a substantial concern for individuals of all demographics, ages, and income groups in communities throughout the City of Oakland; and

**WHEREAS**, the 2015-2023 Housing Element of the City’s General Plan specifically includes policies to encourage the construction of Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs), together, formerly Secondary Units, in single-family zones and recognizes these units as a source of affordable housing; and

**WHEREAS**, the housing affordability crisis threatens the public health, safety, and/or welfare of our citizenry; and

**WHEREAS**, on February 16, 2016, the City Council adopted Ordinance No. 13357 C.M.S., which revised the City’s ADU regulations that were in effect at that time with the purpose of encouraging construction of more ADUs to address the City’s housing shortages and escalating housing costs; and

**WHEREAS**, recognizing the severity of the housing affordability crisis, on April 18, 2017, the City Council adopted Ordinance No. 13435 C.M.S., which revised the City’s ADU regulations to comply with State law, streamlined the process of approval, and established the S-9 Zoning Overlay.

**WHEREAS**, the City Council in 2017 adopted the S-9 Fire Safety Protection Combining Zone Map Overlay within which newly constructed detached (Category Two) ADUs are prohibited; and

**WHEREAS**, on January 1, 2020, and January 1, 2021 several amendments to Government Code §65852.2 and §65852.22, went into effect to encourage Statewide production of ADUs even further by developing a ministerial approval process for certain types of ADUs. California Assembly Bills (AB) 3182 (2020), AB 68, AB 881, AB 578, AB 670, AB 671, and California State Bill (SB) 13 (collectively passed in 2019) introduced several important changes and limitations regarding how local governments can regulate ADUs. The Bureau of Planning is currently issuing permits for ADUs and JADUs under interim regulations required by State law. These interim regulations have not yet been tailored to meet the City's needs; and

**WHEREAS**, changes to the California Government Code require that the City update its ADU regulations; and

**WHEREAS**, the City of Oakland's Strategic Planning Division staff has prepared the following amendments to the Oakland Planning Code and Zoning Map to: (a) bring the City's ADU regulations into full compliance with California State law; (b) reduce regulatory barriers to the development of ADUs and JADUs; (c) identify areas of the city where ADUs involving new construction, addition or conversion of existing detached accessory structures should be restricted due to impacts on traffic flow and public safety; and (d) clarify language in various Chapters of the Planning Code; and

**WHEREAS**, Article XI, Section 5 of the California Constitution provides that the City, as a home rule charter city, has the power to make and enforce all ordinances and regulations in respect to municipal affairs, and Article XI, Section 7, empowers the City to enact measures that protect the health, safety, and/or welfare of its residents; and

**WHEREAS**, the City desires to further the public health, safety and/or welfare by bringing the City's Planning Code into compliance with new State law; and

**WHEREAS**, the portions of Oakland that are within the Very High Fire Hazard Severity Zone (VHFHSZ) include areas of the Oakland Hills that suffered from the devastating Oakland firestorm in 1991 during which 25 lives were lost, 150 people were injured, and over 3,200 homes were destroyed by fire; and

**WHEREAS**, California's fire risk appears to grow each year as a result of climate change with higher temperatures and an increase in drought conditions; and

**WHEREAS**, evolving data from recent wildfires such as the Tubbs Fire in 2017 in Santa Rosa, CA, Camp Fire in 2018 in Paradise, CA, the recent Dixie Fire across multiple Northern Californian Counties, and the Caldor Fire in South Lake Tahoe, CA this year display new extreme fire behavior not observed previously; and

**WHEREAS**, in Paradise, California 86 people have perished during the deadliest in California history fire in 2018, including seven people dying in their cars in a traffic choke point because they could not escape from the fire in time.

**WHEREAS**, new software mapping and evacuation management tools like *Zonehaven* available to Oakland Fire Department (OFD) show that the current road and intersection capacity in VHFHSZ is not adequate for the existing population in the events of mass emergency evacuations, additional units and vehicles within the VHFHSZ will increase the evacuation problem; and

**WHEREAS**, the result of software analysis by OFD indicates that there is not enough time to clear intersections for people to evacuate and for emergency vehicles to access affected areas because of “choke points” that are likely to develop at key intersections during evacuations, thereby blocking the free flow of traffic throughout the VHFHSZ; and

**WHEREAS**, streets that are less than twenty-six (26) feet wide or dead-end streets that are longer than six hundred (600) feet do not meet minimum emergency access standards as specified in Municipal Code Section 16.16.025(C)(1), and are at high risk of being blocked during emergency evacuations as well as blocking access for emergency vehicles to respond to emergencies; and

**WHEREAS**, a recent study by UC Berkeley re-created a hypothetical wildfire model in the Berkeley Hills and estimated that if each household took only one vehicle to evacuate, then the estimated evacuation time would be about two hours, and 245 vehicles would be exposed to immediate fire danger, concluding that the most impactful measure in reducing the time for evacuations was reducing the number of household vehicles; and

**WHEREAS**, the recently adopted by the City Council *Oakland Local Hazard Mitigation Plan* points out existing vulnerable and isolated populations in VHFHSZ; and

**WHEREAS**, recently revised draft *Oakland Vegetation Management Report* underscores the fact that the area within the VHFHSZ is susceptible to large-scale, high intensity, and rapidly spreading wildfires because of the VHFHSZ unique combination of topography, vegetation, prolonged droughts, winds, and other climatic conditions; and

**WHEREAS**, on September 15, 2021, at a duly noticed public hearing, the Planning Commission recommended approval of the proposed changes to ADU regulations and miscellaneous minor changes in various Chapters of the Planning Code, including expanding the S-9 Overlay Zone; and

**WHEREAS**, after a duly noticed public meeting on November 30, 2021, the Community and Economic Development Committee voted to recommend the proposal to the City Council; and

**WHEREAS**, the City Council held a duly noticed public hearing on December 21, 2021 to consider the proposal, and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

**WHEREAS**, the adoption of an ordinance to implement Government Code section 65852.2 and 65852.22 is exempt from CEQA under Public Resources Code section 21080.17. Similarly, the ministerial approval of ADU applications would not be a “project” for CEQA purposes, and environmental review would not be required prior to approving individual

applications; and

**WHEREAS**, in addition, the proposed amendments to the Planning Code and Zoning Map rely on the previous set of applicable CEQA documents including: the Coliseum Area Specific Plan (2105); Broadway Valdez Specific Plan (2014); West Oakland Specific Plan (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan (1998); the Oakland Estuary Policy Plan (1998); the West Oakland, Central City East, Coliseum, and Oakland Army Base Redevelopment Areas; the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010); and various Redevelopment Plan Final EIRs (collectively, Previous CEQA Documents). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, as a separate and independent basis, this proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment); and

**WHEREAS**, the Previous CEQA Documents provide analysis of the environmental impacts of the proposed amendments and support all levels of approval necessary to implement the Planning Code and Zoning Map amendments; and

**WHEREAS**, the proposed amendments to the Planning Code and Zoning Map would not result in any significant effect that has not already been analyzed in the Previous CEQA Documents, and there will be no significant environmental effects caused by the change that have not already been analyzed in the Previous CEQA Documents; and

**WHEREAS**, the City Council hereby finds and determines on the basis of substantial evidence in the record that none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163 are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the Previous CEQA Documents due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no “new information of substantial importance,” as defined in CEQA Guidelines Section 15162(a)(3); and

**WHEREAS**, each as a separate and independent basis, this action is exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (no significant effect on the environment);

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1.** The City Council finds and determines the foregoing recitals to be true and correct and an integral part of the City Council’s decision, and hereby adopts such recitals as findings.

**Section 2.** The City Council finds and determines the adoption of this Ordinance is exempt from CEQA under Public Resources Code Section 21080.17. Similarly, the ministerial

approval of ADU applications would not be a “project” for CEQA purposes, and environmental review would not be required prior to approving individual applications. In addition, the City Council finds and determines the adoption of this Ordinance complies with CEQA in reliance on the Previous CEQA Documents. Further, the Council finds the adoption of this Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment). Each of these provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance

**Section 3.** The Environmental Review Officer shall file a Notice of Exemption/Notice of Determination, and an Environmental Declaration under the California Fish and Game Code (Section 711.4) with the County of Alameda.

**Section 4.** Title 17 of the Oakland Planning Code is hereby amended pursuant to *Exhibit A* attached hereto and incorporated by reference herein. Additions to Title 17 of the Oakland Planning Code are shown as underline and omissions are shown as ~~strikethrough~~.

**Section 5.** The Oakland Zoning and Height Maps are hereby amended pursuant to *Exhibit B* attached hereto and incorporated by reference herein.

**Section 6.** This Ordinance shall be effective 30 days from the date of final passage by the City Council, but shall not apply to (a) building/construction related permits already issued and not yet expired, or (b) zoning and building applications approved by the City and not yet expired, or (c) complete zoning and building applications received by the City, with a documented confirmation from staff that all required planning and building plans have been received and that the application is complete for final review as of the date of final passage. However, zoning applications deemed complete by the City prior to the date of final passage of this Ordinance may be processed under provisions of these Planning Code and Zoning Map amendments if the applicant chooses to do so.

**Section 7.** Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any Federal or State law.

**Section 8.** If any section, subsection, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of the remaining portions which shall remain in full effect.

**Section 9.** This Ordinance serves the public interest and is necessary to protect the health, safety and/or general welfare of the citizens of Oakland and is enacted pursuant to the City of Oakland’s general police powers, Section 106 of the Charter of the City of Oakland, Government Code Section 65852.2, and Article XI, Sections 5 and 7 of the California Constitution.

**Section 10.** The City Council hereby authorizes the City Administrator to make non-substantive, technical conforming changes (essentially correction of typographical and clerical errors), prior to formal publication of the amendments in the Oakland Planning Code.

**Section 11.** The City Clerk of the City of Oakland is hereby directed to transmit this Ordinance with Exhibits to the California Department of Housing and Community Development within sixty (60) days of adoption pursuant to Government Code Section 65852.2(h)(1).

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND  
PRESIDENT FORTUNATO BAS

NOES –  
ABSENT –  
ABSTENTION –

ATTEST: \_\_\_\_\_

ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California

Date of Attestation: \_\_\_\_\_

## NOTICE AND DIGEST

**AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, AMENDING THE OAKLAND PLANNING CODE TO: 1) REVISE REGULATIONS FOR ACCESSORY DWELLING UNITS (ADUS) AND JUNIOR ACCESSORY DWELLING UNITS (JADUS) TO COMPLY WITH STATE LAW; 2) AMEND THE S-9 ZONING OVERLAY ZONE THAT IDENTIFIES AREAS IN THE CITY WHERE ADUS ARE RESTRICTED TO ONE INTERNAL CONVERSION ADU OR JADU PER RESIDENTIAL LOT; 3) PROVIDE AN EXCEPTION MECHANISM FOR ALLOWING ATTACHED AND DETACHED ADUS IN THE S-9 ZONING OVERLAY ZONE; 4) PROVIDE ADDITIONAL WILDFIRE BUILDING PROTECTIONS IN S-9 ZONING OVERLAY ZONE; 5) MAKE CONFORMING CHANGES IN VARIOUS SECTIONS OF THE OAKLAND PLANNING CODE RELATED TO ADUS; AND 6) MAKE APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS.**

This Ordinance amends the Oakland Planning Code and Zoning Map to: (a) bring the City's ADU regulations into full compliance with California State law; (b) reduce regulatory barriers to the development of ADUs and JADUs; (c) identify areas of the city where ADUs involving new construction, addition or conversion of existing detached accessory structures are not permitted due to impacts on traffic flow and public safety; and (d) clarify language in various Chapters of the Planning Code.