




AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: William A. Gilchrist
Director, Planning &
Building Department

SUBJECT: SUPPLEMENTAL - Amendments to
Oakland's Accessory Dwelling Unit
Regulations

DATE: December 13, 2021

City Administrator Approval 

Date: Dec 16, 2021

RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt 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.**

REASON FOR SUPPLEMENTAL

After reviewing the original Agenda Report submitted by Planning & Building Department staff for the November 30, 2021, special Community and Economic Development (CED) Committee meeting, the Department of Race and Equity (DRE) recommended further discussion of race and equity outcomes related to the implementation of this ordinance with further information provided herein to inform the City Council.

In addition, this supplemental report informs the City Council of various conforming and non-substantive Planning Code text changes that were made to the Attachment A of the Agenda Report and Exhibit A of the Ordinance (see Supplemental **Attachment A** and Supplemental **Exhibit A**). These text changes are necessary to ensure that the proposed ordinance is consistent with the City Council's Construction Innovation Ordinance (No. 13666 C.M.S.), which

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was adopted on November 16th, 2021. The changes do not include any new substantive amendments to the Planning Code beyond what has already been adopted by the City Council.

Citywide Race and Equity Outcomes of the Accessory Dwelling Unit (ADU) Ordinance

The *Existing Conditions and Barriers Report* reveals the unequal access of building and living in ADUs to lower-income Black, Indigenous, and People of Color (BIPOC). The report shows that BIPOC and specifically African American residents have the lowest median household income, the lowest homeownership rate, and the lowest levels of accumulated home equity that can be leveraged to access financing for developing ADUs.¹ At the same time, BIPOC residents are the most burdened by the high costs of housing and are experiencing the highest likelihood of loan denial resulting in a high risk of displacement.

Oakland Equity Indicators Report shows that the housing affordability crisis is adversely affecting and displacing low-income BIPOC communities disproportionately and at a much higher rate than other ethnic groups.² As a result, there has been a steady decline of African American residents in Oakland. According to a report by PolicyLink, between 2010 and 2020 Oakland lost 34,000 African American residents – the most of any ethnic group – followed by Native American residents with 18 percent decline in population. The main reason cited for this decline was the housing cost burden.³ These realities, in addition to the history of exclusionary zoning and the discriminatory practice of “redlining,” affect BIPOC communities to this day and create inequality where BIPOC residents may not have the resources to benefit fully from the new ADU ordinances.

In addition to implementing the State law, the proposed ADU ordinance includes amendments designed specifically to mitigate potential negative impacts of the unequal distribution of benefits that may be created by the ordinance across different socio-economic groups and make ADUs more accessible to lower-income BIPOC residents through the following:

- by encouraging more housing in areas where it is safe, sustainable, and affordable;
- by relaxing zoning requirements and making it easier to convert and expand existing structures into livable ADUs on “small lots”⁴ located in ethnically diverse areas that have experienced disinvestment and policy discrimination, and where people are now at a greater risk of displacement;
- by increasing the maximum ADU height limits for Single-Family and Multifamily lots, including for existing structures on the “small lots”; and
- by introducing an amnesty and building code enforcement delay program for existing unpermitted ADUs.

¹ Oakland ADU Initiative. Existing Conditions and Barriers Report. Pp.13-24: <https://cao-94612.s3.amazonaws.com/documents/Oakland-ADU-Research-Report-Jan-2020-Rev-June-2020.pdf>

² Oakland Equity Indicators Report. Pp. 91-103: <https://cao-94612.s3.amazonaws.com/documents/2018-Equity-Indicators-Full-Report.pdf>

³ Oakland's Displacement Crisis: As Told by the Numbers. Policy Link: <https://www.policylink.org/sites/default/files/PolicyLink%20Oakland's%20Displacement%20Crisis%20by%20the%20numbers.pdf>

⁴ Small Lot is defined as a lot no greater than 3,000 square feet or no greater than 35 feet in width.

The proposed ordinance encourages construction of different ADU types in neighborhoods with access to transit and services. Creating more ADUs in places where car dependence is minimized may mitigate residents' overall cost-of-living and may help lower-income BIPOC residents to remain in their current neighborhoods and in communities with services and public transportation. By allowing up to two newly built detached ADUs and at least one internal ADU on multi-family lots that can exceed State law height minimums, the proposed ordinance increases housing choice and promotes availability of units that are generally more affordable and accessible as compared to ADUs on single-family lots.

An allowance for additional expansion of existing structures was added to the proposal after a finding was made that many lots in some historically BIPOC neighborhoods are "small lots" with garages not large enough to convert into livable ADUs. This Planning Code amendment in Section 17.103.01 would allow adequately sized ADUs without triggering the regularly required 4-foot setbacks on small lots. In addition, conversion ADUs are much cheaper to finance and create than newly built detached structures, making it a more affordable option for lower-income households. Therefore, this allowance removes a significant barrier to ADU development and benefits the owners of small lots, some of which are owned by BIPOC residents.

The ordinance amendments also include a proposal for an increase in ADU height in Sections 17.103.01 and 17.103.02 from 16 feet to 18 feet to allow for more flexibility in creating two-story ADUs on single-family or multifamily lots, making them more accessible to BIPOC residents to create larger, multi-generational ADUs that are cheaper to rent than traditional single-family homes. Together with the key allowance for the expansion of existing structures on "small lots" described above, both ordinance amendments provide additional options for lower-income BIPOC residents to create ADUs and to continue living in Oakland.

The amnesty program and enforcement delay of the Building Code is another key component of the proposal that would benefit BIPOC residents who are the most cost-burdened and are more likely to reside in the unpermitted units. The *Existing Conditions and Barriers Report* estimates that there are between 7,500 and 13,600 existing unpermitted ADUs currently in Oakland.⁵ Most of these units were created before the recent State and local legislation made ADUs relatively easy to approve. This ordinance proposes a path beyond State law to legalize the existing units by removing certain zoning standards, such as setbacks, to allow existing illegal units that might not meet these zoning standards to be legalized. In addition, the code amendments include ample time to bring the units into compliance with the City's Building Code standards, as granted under State law. This program will create more housing that is safe to inhabit, benefitting BIPOC tenants that are the most housing cost-burdened, and make it easier for any BIPOC owners that have illegal units to legalize them. This also helps reduce the potential for the displacement of these tenants by creating a path for the units to be legalized and enable the tenants to remain.

While staff does not have the data regarding how many unpermitted ADUs are owned by BIPOC homeowners specifically, the findings in the *Barriers Report* reveal that the primary reasons preventing people from creating legal ADUs are financial and regulatory. An assumption can be made that these barriers are more difficult to overcome for historically

⁵ Oakland ADU Initiative. Existing Conditions and Barriers Report. June 2020: <https://cao-94612.s3.amazonaws.com/documents/Oakland-ADU-Research-Report-Jan-2020-Rev-June-2020.pdf>

disadvantaged groups who do not have access to resources necessary to endure a long and expensive process of creating dwelling units that are “up to code.” Under the same assumption, it is more difficult for a BIPOC household with lower average income and lack of access to financing sources to create a legal dwelling unit. Therefore, staff anticipates that the amnesty program will benefit BIPOC owners of the existing unpermitted units allowing more time to renovate them to meet current standards of safety and comfort while providing consideration for certain existing conditions, such as setbacks, which shall assist both renters and owners to remain in their communities.

To further this goal, the City's Housing and Community Development Department (HCD) is currently developing an equity-based program to support lower-income residents in Oakland's Opportunity Zones through the process of legalizing their existing structures as ADUs. HCD has secured \$3 million in Cal Home grant funding that will be used for loans, construction management, outreach, and other programs to remove barriers to legalizing the ADUs. Since the program will be targeting low-income residents in specific areas like East and West Oakland neighborhoods, it will be primarily beneficial to BIPOC owners and tenants.

In addition to the Planning Code amendments included in this proposal, the *Existing Conditions and Barriers Report* identifies additional financial, permitting, and regulatory barriers that impact BIPOC communities disproportionately. To further address the existing barriers, another important equity-based program has been established in Oakland to promote ADUs with a focus on BIPOC communities who faced discriminatory housing policies and disinvestment. The program, called “Keys to Equity” is administered by Richmond Neighborhood Housing Services, and launched in October of this year.⁶

Keys to Equity aims to reduce the barriers to ADU development by offering applicants financial, design, project management, permitting, and construction support.⁷ This privately funded program is working to increase economic stability by helping to create ADUs in neighborhoods with high-risk of displacement. The City of Oakland will be supporting the initiative by offering a streamlined ADU permitting and approvals process for certain pre-approved ADU plans, which are currently in the process of being developed and approved.

These Planning Code amendments, together with the existing City and private equity-based support programs, aim to create a more affordable supply of housing units in already established neighborhoods, to diversify and increase affordable housing stock, to increase housing choice for BIPOC communities, to provide more people with access to safe and sustainable housing, to decrease the disparity of who benefits economically from building ADUs, and to allow more people, especially those at the higher risk of displacement, the opportunity to remain in their communities.

⁶ <https://keystoequity.org/>

⁷ Keys to Equity: <https://chanzuckerberg.com/newsroom/keys-to-equity-launches-in-oakland-to-support-construction-of-accessory-dwelling-units/>

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt 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 Map 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) Consider 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.

Such decision by City Council is based on the entire record, including this staff report and all attachments hereto, including the Planning Commission staff report of September 15th, 2021 and the CED Committee staff report of November 30, 2021.

For questions regarding this report, please contact Ruslan Filipau, Planner III at (510) 238-3491.

Respectfully submitted,



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Planning and Building Department

Attachment (1):

A: Supplemental Attachment A - Proposed Amendments to the Oakland Planning Code