



AGENDA REPORT


TO: Jestin D. Johnson
City Administrator

FROM: William A. Gilchrist
Planning and Building
Director

SUBJECT: Subdivision Code (Title 16) and
Planning Code (Title 17) Amendments

DATE: April 29, 2024

City Administrator Approval


Jestin Johnson (May 17, 2024 10:17 PDT)

Date:

May 17, 2024

RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing And, Upon Conclusion, Adopt an Ordinance:

1) Amending The Oakland Planning Code (Title 17) Of the Oakland Municipal Code (OMC), As Recommended By The City Planning Commission, To: (A) Update Regulations For Accessory Dwelling Units (ADUs) And Junior Accessory Dwelling Units (JADUs) To Comply With State Law And Implement Miscellaneous And Clean-Up Changes In Support Of The Title 17 Amendments Adopted In October 2023 To Streamline The Development Review Process For Small Projects And Improve The City's Ability To Approve More Complex Projects, Such As Housing, And (B) Provide Written Findings In Support of ADU Planning Code Regulations Restricting the Development of ADUs In The S-9 Overlay Zone and For Non-Habitable Space In Multi-Family Buildings; And

2) Amending The Oakland Subdivision Code (Title 16) of the OMC To Remove The Prevalent Lot Size Requirement, In Line With Previous Title 17 Changes Adopted in October 2023; And

3) Making Appropriate California Environmental Quality Act Findings.

EXECUTIVE SUMMARY

The City of Oakland (City) adopted its Accessory Dwelling Unit (ADU) [Ordinance No. 13677 C.M.S.](#) on January 18, 2022. The California Department of Housing and Community Development (State HCD) reviewed the Ordinance and sent a technical assistance letter to the Planning and Building Director on July 5, 2023 (**Attachment A**). The letter stated that while the Ordinance addresses many statutory requirements, there are some instances where the Ordinance does not comply with State ADU Law. Additionally, there were some instances where State ADU Law has changed since the adoption of Ordinance No. 13667. State HCD provided 23 written findings of instances where the Ordinance was either not in compliance with California Government Code

Sections 65852.2 and 65852.22 or needed to be updated to address updates to State ADU Law. Staff responded to this letter on August 4, 2023, within the statutorily prescribed time period of thirty (30) days, addressing each of State HCD's 23 comments. Staff's response letter is included as the City's Findings in **Exhibit A2** of the proposed Ordinance.

The proposed amendments to the Planning Code address the comments provided by State HCD (see **Exhibit B** of the proposed Ordinance). As required by State law, the City must provide findings (see **Exhibit A1 and A2** of the proposed Ordinance) that the City's ADU Ordinance complies with State ADU Law. Accordingly, Staff has included draft findings at the end of this report to be incorporated within the ADU Ordinance adopting the Planning Code changes.

The City adopted an extensive package of Planning Code amendments in October 2023 that implemented actions in the recently adopted Housing, Environmental Justice, and Safety Elements ([Ordinance No. 13763 C.M.S.](#) and Resolutions [No. 89565](#) and [No. 89907](#) C.M.S.). Staff has since prepared a set of miscellaneous and "clean-up" amendments to bring the Planning Code in alignment with previous Planning Code changes (see **Exhibit C** of the proposed Ordinance). These changes include: 1) Chapter 17.76 S-2 Civic Center Commercial Zone Regulations, Section 17.76.200; 2) Chapter 17.97 S-15 Transit-Oriented Development Commercial Zones Regulations, Sections 17.97.040 and 17.97.070; 3) Chapter 17.116 Off-Street Parking and Loading Requirements, Section 17.116.240; 4) Chapter 17.136 Design Review Procedure, Sections 17.136.025, 17.136.030, and 17.136.040; and 5) Chapter 17.101H D-CO Coliseum Area District Zones Regulations, Section 17.101H.040.

Additionally, changes have been made to two sections of the Oakland Subdivision Code (Title 16) to remove the prevalent lot size requirement in order to allow for smaller lot sizes (see **Exhibit D** of the proposed Ordinance). These changes also align with the previous changes to the Oakland Planning Code that were adopted in October 2023 that allow for lots sizes of 2,000 square feet in most of the residential zones. These changes include: 1) Chapter 16.16 Design Standards, Section 16.16.170, and 2) Chapter 16.24 Parcel Maps, Section 16.24.040. However, the prevalent lot size requirement still exists for lots located in the S-9 Fire Safety Protection Combining Zone under OMC Chapter 17.88.

BACKGROUND / LEGISLATIVE HISTORY

Staff previously went to the Planning Commission in June and September of 2021 to implement Planning Code changes related to ADUs due to several amendments to Government Code §65852.2 and §65852.22 (January 2021). The amendments encouraged Statewide production of ADUs even further by developing a ministerial approval process for certain types of ADUs.

Following the direction from the Planning Commission at the June 2, 2021, meeting, Staff worked closely with the Oakland Fire Department, City Administrator's Office, and Oakland Department of Transportation to create two proposals for limiting, but not eliminating, the development of ADUs in the S-9 Fire Safety Protection Combining Zone Map Overlay (S-9 Overlay Zone). These proposals were presented to the Planning Commission at the hearing on September 15, 2021. The Commission voted unanimously (with one Recusal) to recommend that City Council approve Option 2. Option 2 first expanded the S-9 Overlay Zone to include all areas within the Very High Fire Hazard Severity Zone (VHFHSZ) and that have a road width of less than 26 feet and/or a

dead-end street of 600 feet or longer. Second, it allowed only one ADU or JADU within the S-9 Overlay Zone.

On April 3, 2024, staff presented to the Planning Commission: 1) the proposed amendments to the Planning Code that would update the ADU regulations to address the comments received in State HCD's July 5th technical assistance letter; 2) the associated findings; and 3) the proposed amendments to the Planning Code to implement "clean-up" and miscellaneous changes that further clarify and support the Planning Code amendments that were adopted in October 2023.

Planning Commission unanimously recommended that the City Council approve the proposed miscellaneous and "clean-up" Planning Code amendments, the Planning Code amendments related to ADUs, and the findings related to ADUs. In addition, the Planning Commission recommended making the Planning Code "clean-up" in table 17.103.10 and table 17.103.02 to change the word "major" to "public" in reference to the "no parking" requirement for ADUs located within ½ mile of public transit. As such, with the exception of the S-9 Overlay Zone, the requirement will require no parking for ADUs within ½ mile walking distance of public transit stop, instead of major transit stop.

ANALYSIS AND POLICY ALTERNATIVES

The proposed amendments to the Planning Code and Subdivision Code advance the following citywide priorities:

Strategic Thinking: Updating the City's ADU regulations to align with recent changes in State Law and creating detailed findings for ADUs in the VHFHSZ ensures effective and efficient delivery of ADU projects.

Centering Equity: Updating the City's ADU regulations to comply with State Law and further aligning the Planning and Subdivision Codes to streamline the development review process for small projects will improve the City's ability to improve more complex projects, such as housing and ensure that housing units are effectively and efficiently delivered, helping to address our housing crisis.

The following sections summarize the proposed amendments to the Planning Code (Title 17) and Subdivision Code (Title 16) of the OMC and associated findings for the ADU Ordinance.

1. ADU-Related Planning Code Amendments

The proposed amendments to the ADU-related sections of the Oakland Planning Code address the comments provided by State HCD as provided in **Table 1**. The technical assistance letter sent by State HCD is included as **Attachment A** to this Agenda Report and staff's response letter is included as the City's Findings in **Exhibit A2** of the proposed Ordinance.

Table 1: Summary of Comments in State HCD's July 2023 Technical Assistance Letter

Comment # and Topic Area	Summary of Comment	Addressed?
1 – ADUS in VHFHSZ	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).	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 City Findings.
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).	Addressed
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.	Addressed
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.	Addressed
5 – Fire Safety Parking Compromise	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.	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 City Findings.
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.	Addressed

Comment # and Topic Area	Summary of Comment	Addressed?
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.	Addressed
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.	Addressed
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.	Addressed
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. (This comment reflects changes in State Law made after Oakland’s code was adopted in January 2022.)	Addressed
11 – Amnesty Clause & S-9	The Ordinance exempts units built in the S-9 Overlay Zone from the amnesty program which exceeds state statute.	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 City Findings.
12 – Expiration Clause	The Ordinance’s amnesty clause has a condition for expiration when Government Code Section 65852.23 has no condition for expiration. (This comment reflects changes in State Law made after Oakland’s code was adopted in January 2022.)	Addressed

Comment # and Topic Area	Summary of Comment	Addressed?
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. (This comment reflects changes in State HCD’s interpretation of State law after Oakland’s ADU Ordinance was adopted in January 2022.)	Addressed
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.	Addressed
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.	Addressed
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.	Addressed
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.	Addressed
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.	Addressed
19 – Ingress	ADUs are allowed 150 sf. to accommodate ingress and egress and	Addressed

Comment # and Topic Area	Summary of Comment	Addressed?
	such expansions are not dependent on the size of the unit. The Ordinance must be revised to note this.	
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.	Addressed
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.	Addressed
22 – Lot Coverage, FAR, and Open Space	Lot Coverage, FAR, and Open Space requirements may not preclude development of units 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.	Addressed
23 – Non-habitable Space Definition	Non-habitable 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 City Findings.

2. City Findings for ADU Ordinance

1. ADUs in the Very High Fire Hazard Severity Zone

Housing density in the Oakland hills presents unique public safety challenges in the event of an emergency evacuation or ambulance/fire response. The City’s Zonehaven Model, which models an emergency evacuation scenario similar in scale to the Oakland firestorm of 1991, shows that current housing density in the VHFHSZ is already at unmanageable levels for emergency response, without additional density. If each single-family parcel is

ministerially permitted to have two ADUs and one JADU per parcel (three ADUs total), then emergency response will further exacerbate an already unsustainable evacuation scenario.

The City has consulted with numerous experts that have warned City decision-makers against increasing housing density in the Oakland hills. In the [2021-2026 Hazard Mitigation Plan](#), Tetra Tech identified the “dense population” in the Oakland hills, compounded by narrow urban streets and parked cars, as a significant impact on evacuation. Oakland’s Local Hazard Mitigation Plan (LHMP), as well as its recently adopted Safety Element, both identify managing housing density in the Oakland hills as an important strategy for addressing increased wildfire risk and maintaining the ability of the City to provide adequate emergency response and evacuation routes for those areas.

In addition, on November 19, 2019, the City Council adopted Resolution No. 87940 C.M.S., declaring Wildfire Prevention a top priority for the City and requested the City Administrator to present a comprehensive report to the Council’s Public Safety Committee (PSC) that addresses Oakland’s Wildfire Prevention Strategies. The Wildfire Prevention Planning Report concluded that housing density would need to be limited in the S-9 Overlay Zone and a comprehensive evacuation plan would need to be developed for those already living in these areas due to lack of road infrastructure and access to escape routes in the event of a fire. In preparation of Oakland’s Vegetation Management Plan, consultants advised the City that the current condition of “high housing density” and “congested roads during emergencies” presented significant challenges to the City in reducing wildfire risk to public safety.

Permitting up to three ADUs per lot in the VHFHSZ would create significant impacts on traffic flow and public safety pertaining to emergency response and evacuation. By limiting ADU development to one ADU or JADU per lot in the VHFHSZ, the City heeds the recommendations and directions of local and regional planning experts to adhere to the mitigation measures to which we have committed. In addition, State law permits local agencies to make life safety findings under Government Code section 65852.23 to limit ADUs.

For additional details and evidence, please review City Response number one as well as accompanying attachments including supporting data and evidence, as set forth in the Ordinance **Exhibit A2: City Response to State HCD Comment Letter**.

2. Requiring Parking for JADUs in the Very High Fire Hazard Severity Zone

Managing street parking is an important piece of the fire safety efforts in VHFHSZ, but enforcement continues to be a challenge even where no-parking rules are in place. ADUs often do not require off-street parking, leaving people who reside in these units to park their cars illegally on the sides of already narrow, legally nonconforming roads in the S-9 Overlay Zone, where street parking is just not feasible due to substandard road widths. Increasing housing density and the number of vehicles, which is very likely given the S-9 Overlay Zone is not well-served by public transit, exacerbates the current condition of “high housing density” and “congested roads during emergencies” that presents significant challenges to the City in reducing wildfire risk to public safety. In addition, there have been instances when cars have parked illegally on narrow roads and have prevented

emergency vehicles to respond to an emergency at a residence. Illegally parked vehicles have interfered with fire response by increasing response time and/or requiring changes in operational procedures therefore increasing the risk to residents and responders and increasing the threat to property. State law permits local agencies to make life safety findings under Government Code section 65852.23 to require parking for ADUs. For additional details and evidence, please review City Response number five as well as accompanying attachments of evidence in the Ordinance **Exhibit A2: City Response to State HCD Comment Letter**.

3. Amnesty Clause and the S-9 Overlay Zone

For all of the reasons already discussed above, the City has grave concerns about the life safety of occupants in the S-9 Overlay Zone, in terms of: (1) the ability to evacuate from the area in an emergency and access for Emergency services to reach residents suffering an emergency, (2) provision and maintenance of defensible space and building separations, and (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. For additional details and evidence, please review City Response number eleven as well as accompanying attachments of evidence in the Ordinance **Exhibit A2: City Response to State HCD Comment Letter**.

4. Definition of Non-habitable Space

State law defines non-habitable space as "...including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages." These are unfinished areas that are not meant to be occupied by people and used communally. This definition is in line with the ADU Ordinance's definition of non-habitable space in multifamily primary dwellings, which states "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."

In Oakland, tenant protection is a high priority and is also another means of addressing the extreme housing crisis and lack of housing affordability. The City has an interest in ensuring that property owners do not attempt to manipulate State law to evict tenants by removing important tenant amenities, such as laundry rooms, gyms, and other finished room amenities. Since none of these finished-room spaces are mentioned in the "class" of examples provided, City staff believe that the intent of State law was to permit ADU development in the unfinished spaces of multi-family building, in line with our definition of non-habitable space. Otherwise, State law would have stated that ADU conversions are permitted "anywhere in the multifamily building that is not already livable or habitable space." Since the State law is not that broad, the legislature appears to have intended to limit it to a class of unfinished spaces.

5. State HCD Relied on Incorrect Alameda County Transit Information in Justifying Why the City's ADU Regulations in the S-9 Overlay Zone Are Impermissible.

The State HCD Comment references Map 18 at the end of Appendix A and claims it shows several large sections of the S-9 Overlay Zone south of Piedmont that are “well served with bus stops for the 646, 652 and 682 bus lines within a half-mile walk.” Bus numbers 646 (Montera-Skyline), 652 (Montera-MacArthur) and 682 (Bishop O’Dowd High line) are school bus lines that run only during school times and are deployed for the purpose of serving as school transportation lines. None of these bus lines is currently active and there are no planned upcoming schedules for these bus lines¹. As a result, residents in this and other areas in the S-9 Overlay Zone must rely on vehicular transportation to and from their primary residences and ADUs. This specific issue underscores the need for cities to play an active role in local hazard planning as cities face the effects of climate change.

3. **Proposed Miscellaneous and “Clean-Up” Planning Code Amendments**

The proposed miscellaneous and “clean-up” amendments include:

- 1) Chapter 17.76 S-2 Civic Center Commercial Zone Regulations, Section 17.76.200.
- 2) Chapter 17.97 S-15 Transit-Oriented Development Commercial Zones Regulations, Sections 17.97.040 and 17.97.070.
- 3) Chapter 17.116 Off-Street Parking and Loading Requirements, Section 17.116.240.
- 4) Chapter 17.136 Design Review Procedure, Sections 17.136.025, 17.136.030, and 17.136.040.
- 5) Chapter 17.101H D-CO Coliseum Area District Zones Regulations, Section 17.101H.040.

A summary of the proposed changes in each section is provided below.

Table 2: Summary of Proposed Miscellaneous and “Clean-up” Amendments

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 percent 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 that were adopted by City Council in September 2023.

¹ The status of service for each line is listed on AC Transit’s website as follows:
Line 646: <https://www.actransit.org/bus-lines-schedules/646>
Line 652: <https://www.actransit.org/bus-lines-schedules/652>
Line 682: <https://www.actransit.org/bus-lines-schedules/682>.

Chapter 17.116 Off-Street Parking and Loading Requirements, Section 17.116.240	Changes to allow tandem parking requirements for ADUs and for 50 percent of the required parking spaces for Two-to-four Family Residential Facilities. These changes further clarify code amendments that were adopted by City Council in October 2023.
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 by City Council 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 by City Council 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 17.136.040	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.

4. Proposed Subdivision Code Amendments (Title 16)

The proposed miscellaneous and “clean-up” amendments include:

- 1) Chapter 16.16 Design Standards, Section 16.16.170.
- 2) Chapter 16.24 Parcel Maps, Section 16.24.040.

Changes have been made to remove the prevalent lot size requirement (except in the S-9 Overlay Zone) in order to allow for smaller lot sizes of 2,000 square feet that were part of the previous changes to the Oakland Planning Code that were adopted by City Council in October 2023.

FISCAL IMPACT

If adopted by City Council, there will be no impact on costs to the City. Implementation of these ADU changes will be a routine component of ministerial project review and approval administered by the Planning and Building Department, which collects fees for such review and approvals as established in the Master Fee Schedule. Staff will inform the public of the new regulations as part

of all applicable inquiries and apply the new regulations as part of all applicable planning and building permit applications. Staff will also develop any application materials including summaries and guides using internal resources and staff's time.

PUBLIC OUTREACH / INTEREST1

To adopt the ADU Ordinance in 2022, staff conducted significant engagement with community members, interested parties and stakeholders, as well as internal City Departments to review and discuss the ADU regulations. Given that these current changes proposed are in response to comments made by State HCD after their review of the ADU Ordinance and are required to bring our Ordinance into compliance with State Law, no additional public engagement was conducted.

The proposed amendments were presented at a public meeting of the Planning Commission on April 3, 2024, and there were no speakers on the item. The meeting was noticed in the *Oakland Tribune*.

COORDINATION

This report and legislation have been reviewed by the Office of the City Attorney. Staff coordinated closely with the Oakland Fire Department, Oakland Department of Transportation, and the City Administrator's Office in the development of the original Ordinance and the response to State HCD's technical assistance letter, which were the basis of the proposed findings.

SUSTAINABLE OPPORTUNITIES

Economic: The amendments to ADU regulations are intended to encourage construction of more ADUs and JADUs, and thereby help address the city's housing shortage and escalating costs.

Environmental: One of the benefits of ADUs and JADUs is that because they go into established neighborhoods, they can contribute to the city's desire to foster more dense and walkable neighborhoods with greater use of bicycling and transit.

Race & Equity: The amendments to ADU regulations may help with adding more units of housing throughout all areas of the City where residential development is allowed. This additional supply of housing that is relatively inexpensive and fast to construct will diversify the current housing stock and provide more people across multiple socio-economic levels with access to housing. ADUs built in areas that are at greater risk of displacement and in transit-rich corridors with access to services are especially valuable for the most economically disadvantaged communities. ADUs may also help some homeowners facing economic challenges to continue to live in the community because of the additional rental income these units bring. Finally, ADUs would allow for multi-generational households or provide a place for a caretaker. However, it is important to note that ADUs cannot have an affordability requirement.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed amendments to the Planning Code rely on the previously certified Final Environmental Impact Reports for: the Oakland 2045 General Plan Update - Phase 1 (2023); the Coliseum Area Specific Plan (2105); Broadway Valdez Specific Plan (2014); West Oakland Specific Plan (2014); Central Estuary Area Plan (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; and various Redevelopment Plan Final EIRs (collectively, "EIRs"). 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).

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Conduct A Public Hearing And, Upon Conclusion, Adopt an Ordinance:

- 1) Amending The Oakland Planning Code (Title 17) Of the Oakland Municipal Code ("OMC"), As Recommended By The City Planning Commission, To: (A) Update Regulations For Accessory Dwelling Units (ADUs) And Junior Accessory Dwelling Units (JADUs) To Comply With State Law And Implement Miscellaneous And Clean-Up Changes In Support Of The Title 17 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, And (B) Provide Written Findings In Support of ADU Planning Code Regulations Restricting the Development of ADUs In The S-9 Overlay Zone and For Non-Habitable Space In Multi-Family Buildings; And
- 2) Amending The Oakland Subdivision Code (Title 16) of the OMC To Remove The Prevalent Lot Size Requirement, In Line With Previous Title 17 Changes Adopted in October 2023; And
- 3) Making Appropriate California Environmental Quality Act Findings.

For questions regarding this report, please contact Khalilha Haynes, PLANNER III, at 510-406-4802.

Respectfully submitted,



WILLIAM A. GILCHRIST
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Attachments:

A: State HCD's Technical Assistance Letter from July 2023

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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July 5, 2023

William Gilchrist, Director
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Oakland, CA 94612

Dear William Gilchrist:

RE: Review of Oakland's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, § 65852.2)

Thank you for submitting the City of Oakland (City) accessory dwelling unit (ADU) Ordinance No. 13667 (Ordinance), adopted January 18, 2022, to the California Department of Housing and Community Development (HCD). HCD has reviewed the Ordinance and submits these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD finds that the Ordinance does not comply with sections 65852.2 and 65852.22 in the manner noted below. Under that statute, the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than August 4, 2023.

The Ordinance addresses many statutory requirements; however, HCD finds that the Ordinance does not comply with State ADU Law in the following respects:

- Introduction, Chapter 17.88, 17.103.080 (A)(7) – *S-9 Fire Safety Zone* – Section 17.88.010 defines the S-9 Zone as “[l]ots located, in whole or part, within or adjacent to VHFHSZs (Very High Fire Hazard Severity Zones) and... [when] the lot is accessed by streets... with a pavement width of less than twenty-six (26) feet at any point or [where] a lot is located on a dead-end street that has a total length of size hundred (600) feet or longer from the nearest intersection.” Section 17.88.050 (A) then prohibits “One Family and Multifamily Category One Accessory Dwelling Units that are conversions of space outside the envelope of an existing Residential Facility; (2) More than one Multifamily Category One Accessory Dwelling Unit that is within the existing envelope of an existing Residential Facility per lot; (3) One Family and Multifamily Category Two Accessory Dwelling Units; (4) Multifamily Category Three Accessory Dwelling Units.” This effectively restricts new construction ADUs subject to Government Code section 65852.2, subdivision (e), and attached ADUs subject

to Government Code section 65852.2, subdivision (a), within the S-9 Fire Safety Zone. Supporting evidence for these restrictions is provided in the introduction to the Ordinance. This restriction is repeated in section 17.103.080 (A)(7), which states that “[d]evelopment 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) JADU per Single Family, Two Family or Multifamily lot.”

However, while HCD is sympathetic to concerns about fire safety and the need to ensure adequate evacuation in the event of a fire, the City has not adequately demonstrated that new ADUs will impact public safety in the VHFHSZ. The findings as presented in 17.88.020 feature no data and refer more to vehicle use and evacuation than housing, while mentioning a Local Hazard Mitigation Plan that “points out existing vulnerable and isolated populations in VHFHSZ areas” and a Vegetation Management Report that “underscores the fact that the area within the VHFHSZ is susceptible” to wildfires. Note that the VHFHSZ mapping was not intended to serve as a development moratorium. Rather, according to Cal Fire, these maps are intended to be used for planning purposes and mitigation measures such as building material requirements and zones of defensibility around structures.

Given the City’s attention to vehicle use as being a primary concern, the City does not account for the potential for ADUs to be excluded from requiring a parking space given the availability of public transit in the S-9 overlay. For example, Map 18 at the end of Appendix A shows several large sections of the S-9 overlay South of Piedmont; each of these areas is well served with bus stops for the 646, 652 and 682 bus lines within a half-mile walk. All such areas would not be required to provide parking spaces. Furthermore, occupancy of an ADU does not necessarily guarantee the presence of another car on a lot.

Per State ADU Law, ADUs are permitted in all areas zoned for residential and mixed use, and a local agency may, by ordinance, designate areas for the creation of ADUs based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety (Gov. Code, § 65852.2, subd. (a)(1)(A)). However, local jurisdictions may not preclude the creation of categories of ADUs altogether. In this situation, any limits on where ADUs are permitted based on the impacts of public safety should be accompanied by detailed findings of fact explaining why ADU limitations are required and consistent with these factors.

Lastly, even if the City provided adequate justification for this restriction on ADUs under Government Code section 65852.2, subdivision (a), the City may not justify a restriction, such as exists in Sections 17.88.050 (A)(1), (A)(2) and (A)(3) on ADUs created under subdivision (e). Local development standards (such as an area restriction based on VHFHSZ designation) provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a)

through (d), do not apply to ADUs created under Government Code section 65852.2, subdivision (e). Therefore, the City must ministerially permit units created pursuant to subdivision (e).

- 17.09.040 (A) – *JADU Definition* – The Ordinance prohibits JADUs “as a conversion of detached or attached accessory structures.” However, Government Code section 65852.22, subdivision (a)(4), states that an ADU Ordinance must “[r]equire a permitted junior accessory dwelling unit to be constructed within the walls of the proposed or existing single-family residence. For purposes of this paragraph, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” Therefore, the City must allow for the conversion of enclosed uses within the residence, such as attached garages.
- 17.30.140 and 17.102.270 – *Additional Kitchen* – The Ordinance states, “No residential facility shall be permitted to have both an additional kitchen... and [an] ADU.” However, the presence of an additional kitchen cannot preclude the ministerial approval of an ADU that conforms to Government Code section 65852.2, though the presence of an ADU may preclude the creation of an additional kitchen. The City must note the exception.
- 17.33.040, Table 17.33.02 (L1) – *Existing Primary Dwellings* – The Ordinance states that in the Neighborhood Center Commercial Zone, ADUs “are permitted when there is an existing One-Family Dwelling on a lot...” The table appears to permit the development of two-family and multifamily dwellings as well. Per Government Code section 65852.2, subdivision (a)(1)(D)(ii), ADUs must be ministerially approved on any lot “zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.” The Ordinance omits mention of proposed single-family dwellings and existing or proposed multifamily dwellings. The City must amend the language to comply with statute.
- 17.88.050 (B)(1) – *Fire Safety Parking Compromise* – The Ordinance allows for alternative ADU development options in the S-9 Fire Overlay if “[a]t least one (1) additional off-street parking space is created on the lot for the ADU in addition to any regularly required off-street parking spaces for the primary residential facility. Also, any lost parking spaces must be replaced on the lot....” The concern with the S-9 Overlay has previously been discussed. However, Government Code section 65852.2, subdivision (d), prohibits requiring parking when any of the following apply:
 - The ADU is located within one-half mile walking distance of public transit. (Gov. Code, § 65852.2 (d)(1).)
 - The ADU is located within an architecturally and historically significant historic district. (Gov. Code, § 65852.2 (d)(2).)

- The ADU is part of the proposed or existing primary residence or an accessory structure. (Gov. Code, § 65852.2 (d)(3).)
- On-street parking permits are required but not offered to the occupant of the ADU. (Gov. Code, § 65852.2 (d)(1)(d).)
- A car share vehicle is located within one block of the ADU. (Gov. Code, § 65852.2 (d)(5).)
- Furthermore, pursuant to Government Code section 65852.22, subdivision (b)(1), a parking space may not be required under any circumstance for a JADU. Therefore, the City must remove this section.
- 17.103.080 (A)(3) – *Separate Sale* – The Ordinance currently prohibits the separate sale of an ADU or junior accessory dwelling unit (JADU). However, Government Code section 65852.26 creates a narrow exception to allow separate conveyance of an ADU to a qualified buyer if the property was built or developed by a qualified nonprofit corporation, among other things. The City should update the Ordinance to cite the exception.
- 17.103.080 (A)(9) – *Exterior Visibility* – The Ordinance states that “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. However, local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created under Government Code section 65852.2, subdivision (e), which applies to converted units created on the second floor. Furthermore, as statute for both ADUs and JADUs require independent entry into the unit, a constraint on the location provisions necessary for independent entry may prohibit the creation of an additional housing unit. (Gov. Code, § 65852.2, subd. (e)(1)(A)(ii) (Gov. Code, § 65852.22, subd. (a)(5)) Therefore, the City must amend the Ordinance to clarify that the exterior stairway must not be visible when feasible.
- 17.103.080 (A)(10)(a) and (10)(b) – *Oakland Cultural Heritage Survey* – The Ordinance creates special restrictions for ADUs in “structures rated ‘A’, ‘B’ or ‘C’ by the Oakland Cultural Heritage Survey. Government Code section 65852.2, subdivision (a)(1)(B)(i), states that local jurisdictions may, “Impose standards on accessory dwelling units that... prevent adverse impacts on any real property that is listed in the California Register of Historic Resources.” State statute does not acknowledge *local* registers. Therefore, the City must remove these sections.
- 17.103.080 (A)(12) – *Landscaping Standards* – The Ordinance requires trees to be planted for every ADU developed, with larger units requiring more trees. However, Government Code section 65852.2, subdivision (a)(5), states, “No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.” Therefore,

ADU approval cannot be made contingent on planting trees. Moreover, local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created under Government Code section 65852.2, subdivision (e). While the City may award voluntary tree planting by providing incentives, it may not make it a requirement. The City might consider creating or modifying incentive programs to encourage tree planting. Accordingly, the City must either remove the tree planting requirement from the Ordinance or clarify it as an incentive.

- 17.103.080 (A)(15)(c) – *Limited Amnesty Clause* – The Ordinance states “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.” However, Government Code section 65852.23, subdivision (a), states “(a) Notwithstanding any other law... a local agency shall not deny a permit for an unpermitted accessory dwelling unit that was constructed before January 1, 2018, due to either of the following: (1) The accessory dwelling unit is in violation of 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. (2) The accessory dwelling unit does not comply with Section 65852.2 or any local ordinance regulating accessory dwelling units.” The City’s amnesty program has a narrower scope than state statute requires, as 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. Therefore, the City must amend the Ordinance to comply with statute.
- 17.103.080 (A)(15)(f) – *Amnesty Clause & S-9* – The Ordinance exempts units built in the S-9 Overlay from the amnesty program. As the concerns with the S-9 Overlay have already been discussed, exempting units in this area for an amnesty program intended for all applicable unpermitted ADUs exceeds state statute. The City must remove this reference.
- 17.103.080 (A)(15)(h) – *Expiration Clause* – The Ordinance conditions the amnesty clause with “The Planning and Building Director or his or her designee shall not approve any applications for the Planning Code amnesty request or Building Code enforcement delay on or after January 1, 2030.” However, Government Code section 65852.23 has no condition for expiration. Therefore, the City must remove this section.
- 17.103.01, Table A, Note 1 – *Unit Mixture* – The Ordinance states that “A Category One or Category Two ADU may be combined on the lot with one (1) JADU. However, a lot may not contain both a Category Two ADU and a Category One ADU. A lot with a One-Family Facility may only contain two ADUs if one (1) is a JADU.” This forces a developer or homeowner to choose either a converted unit or a detached new construction unit. However, Pursuant

to Government Code section 65852.2, subdivision (e)(1), “Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application...to create any of the following: (A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling...(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure.” Moreover subpart (B) permits “One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks.” The use of the term ‘any’ followed by an enumeration of by-right ADU types permitted indicate that any of these ADU types can be combined on a lot zoned for single family dwellings. The Legislature, in creating the list did not use “or” nor “one of” to indicate only one or another would be applicable to the exclusion of the other.

Thus, if the local agency approves an ADU that is created from existing (or proposed) space of a single-family dwelling, or created from an existing accessory structure, and the owner subsequently applies for a detached ADU permit (or vice versa), which meets the size and setback requirements, pursuant to the subdivision, the local agency cannot deny the applicant, nor deny a permit for a JADU under this section. This permits a homeowner, who meets specified requirements, to create one (1) converted ADU, one (1) detached, new construction ADU, and one (1) JADU, in any order without prejudice, totaling three units. This standard simultaneously applies to ADUs created pursuant to Government Code section 65852.2, subdivision (e)(1)(C) and (D), on lots with proposed or existing multifamily dwellings according to specified requirements. Therefore, the City must revise the table and remove the note to establish the allowable unit combination.

- Tables 17.103.01 and 17.103.02 – *Converted Size Limitations* – The Ordinance creates size limitations for converted units within the primary and accessory structures for both single-family and multifamily buildings. However, size maximums do not apply to converted units, as local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created under subdivision (e), and only new construction detached in subdivisions (e)(1)(B) and (e)(1)(D) have a discrete size limit stated therein. The City must note the exception.
- Numerous References – *Height Limits* – The Ordinance refers throughout to a height maximum of sixteen feet for ADUs. However, Government Code section 65852.2, subdivision (c)(2)(D), sets ADU height maximums at 16, 18, and 25 feet, depending on the applicable provisions. The City must review current state statute and amend the Ordinance accordingly.
- Tables 17.103.01 and 17.103.02 – *Parking* – The Ordinance sets out the conditions for which parking is not required with the creation of an ADU. However, it omits reference to Government Code section 65852.2, subdivision

(d)(1)(C), which states that no parking may be required when "...the accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure." This would also include all JADUs. The City must note the exceptions.

- Table 17.103.01 – *Owner Occupancy* – The Ordinance states "Owner must occupy the JADU or the primary residence." However, Government Code section 65852.22, subdivision (a)(2), states "Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization." The City must note the exception.
- Table 17.103.02 – *Unit Mixture* – The Ordinance states that a Category 3 ADU "precludes creation of any other ADU." There are three ADU types governed by Category 3. First, it includes some units created pursuant to Government Code section 65852.2, subdivision (a) – namely, new-construction attached units. However, Government Code section 65852.2, subdivision (a), permits ministerial approval of a compliant ADU with an existing or proposed primary dwelling unit, either multifamily or single-family. Subsequent to this allowance in subdivision (a), subdivision (e) begins with "notwithstanding subdivisions (a) through (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-used zone to create any of the following..." before listing the four categories of subdivision (e) units. Therefore, the prior existence of an attached new-construction Category 3 ADU cannot preclude the development of a Category 1 or Category 2 ADU.

Secondly, another ADU type governed by Category 3 is a converted unit created to the same dimensions as a "legally existing attached accessory structure" in multifamily structures. This conforms to Government Code section 65852.2, subdivision (e)(1)(C). The Ordinance must permit the combination of such a unit with other units built subject to Government Code section 65852.2, subdivision (e), as discussed in the finding *Unit Mixture* above. The City must note the exceptions.

- Table 17.103.01, Note (5) – *Ingress* – The Ordinance states that an expansion of not more than 150 square feet (s.f.) may be permitted for the purposes of ingress if "...the ADU is no greater than eight-hundred (800) square feet." However, the allowance for expansion to accommodate ingress and egress may be for a unit that conforms to Government Code section 65852.2, subdivision (e)(1)(A)(i), which reads that the unit "...may include an expansion of not more than 150 square feet beyond the same physical dimensions as the **existing accessory structure.**" (emphasis added). Note that such expansions are not dependent on the size of the unit but are only permissible with an "existing accessory structure." Therefore, the City must remove this reference.

- Tables 17.103.01 and 17.103.02 – *Maximum Size* – The Ordinance states that converted One-Family units be “50% of floor area of primary residence or 850 s.f., whichever is greater, but shall not exceed 1,200 sf.” It later states that detached ADUs with multifamily primary dwellings be no larger than “850 sf. for studio or one-bedroom; 1,000 sf. for 2 bedrooms or more.” However, local design standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), may not preclude a unit built subject Government Code section 65852.2, subdivision (e), which includes all converted units. Therefore, the City must amend the tables to note that no size maximums apply to any converted unit or any detached unit with a multifamily primary dwelling.
- Tables 17.103.01 and 17.103.02 – *Front Setbacks* – The Ordinance requires, for One-Family Primary dwellings, front setbacks “established by the development standards of the underlying zoning district, except when lot conditions preclude creating one ADU of no more than 800 s.f. and no more than 16 feet in height...” A similar condition exists for multifamily buildings in table 17.103.02, though two ADUs are allowed in the exception for Category 1 and 2 ADUs and one ADU is allowed in the exception for Category 3. The issues with restrictive unit allowances have already been addressed. However, the absence of alternative siting may not be a prerequisite for allowing an ADU in the front setback. Government Code section 65852.2, subdivision (c)(2)(C), does not condition placement of an 800 square foot unit on no other sites being available. Therefore, the City must remove these sections.
- Tables 17.103.01 and 17.103.02 – *Lot Coverage, FAR and Open Space* – The Ordinance allows “One JADU and One ADU of no more than 800 s.f. that is no more than 16 feet in height with at least 4 foot setbacks.” It also requires that, relative to FAR requirements for multifamily primary dwellings, “New ADUs must be consistent with the regulations contained in the underlying zoning district, except to establish one or two Category Two ADUs of no more than 800 sf.” It requires that for multifamily primary dwellings, “required open space for existing units, as established by the underlying zoning district, must be maintained...” except to allow exempted units. It has already been noted that the City must ministerially permit ADUs subject to different sections of statute in combination with one another; likewise, the height limitation has been addressed. However, be further advised that lot coverage, FAR and Open space requirements may not preclude any unit 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 City must amend the Ordinance to comply with statute.
- Table 17.103.02 (2) – *Nonhabitable Space Definition* – The Ordinance defines non-habitable space in multifamily primary dwellings: “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.” However, statute defines such space much more broadly in Government Code section 65852.2, subdivision (e)(1)(C): “...including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages.” There is no condition in statute to require that such spaces *not* be “any other finished spaces that are meant to be occupied by people”. Defining it in this way is potentially restrictive and thus violates State statute. The City must remove the quoted language.

In response to the findings in this letter, and pursuant to Government Code section 65852.2, subdivision (h)(2)(B), the City must either amend the Ordinance to comply with State ADU Law or adopt the Ordinance without changes. Should the City choose to adopt the Ordinance without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinance complies with State ADU Law despite the findings made by HCD. Accordingly, the City’s response should provide a plan and timeline to bring the Ordinance into compliance.

Please note that, pursuant to Government Code section 65852.2, subdivision (h)(3)(A), if the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD may notify the City and the California Office of the Attorney General that the City is in violation of State ADU Law.

HCD appreciates the City’s efforts provided in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please contact Mike Van Gorder, of our staff, at (916) 916-776-7541 or at mike.vangorder@hcd.ca.gov if you have any questions or would like HCD’s technical assistance in these matters.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Housing Accountability Unit Chief