



# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

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

**SUBJECT:** Amendments to Oakland's Accessory  
Dwelling Unit Regulations

**DATE:** November 01, 2021

City Administrator Approval

Date: Nov 17, 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.**

## EXECUTIVE SUMMARY

On January 1, 2020, and January 1, 2021, several new California State laws and amendments went into effect to encourage the construction of Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs), which are currently termed "Secondary Units" in the City of Oakland Planning Code. Pursuant to Government Code Section 65852.2(a)(4), until the City adopts an ordinance that complies with State law, the City's existing ADU regulations in the Planning Code are null and void and only State standards may be enforced. This report describes proposed amendments to align the City's ADU regulations with State law and introduce other changes that clarify the ADU regulation in the City. The proposed Planning Code amendments encourage ADUs by reducing regulatory barriers through the adoption of streamlined approval processes consistent with State law and adoption of objective standards, where appropriate. These amendments also support and advance the Citywide Priorities of **housing, economic and cultural security, and holistic community safety.**

Adoption of the proposed Ordinance Amendments will accomplish the following:

CED Committee  
November 30, 2021

- Bring all ADU and JADU (previously Secondary Unit) standards in the Oakland Planning Code into compliance with State Law.
- Clarify aspects of ADU and JADU regulation and further encourage creation of ADUs and JADUs by removing regulatory barriers in the City's Planning Code.
- Include new standards for the processing, number, size, height, parking, location, landscaping, and setbacks for the construction of various types of new ADU structures and ADUs within existing accessory structures, single-family homes, and two-family and multi-family buildings.
- Establish regulations for JADUs within single family homes.
- Introduce objective design standards for the design and location of ADUs and to streamline approval of conforming ADUs.
- Create an amnesty and enforcement relief program for un-permitted existing ADUs.
- Include amendments beyond the minimum required by State law, based on feedback from public comment, to further reduce the regulatory barriers and encourage the development of ADUs and JADUs - which are considered one way to help address the city's housing supply shortage.
- Establish regulations for the development of ADUs and JADUs within the S-9 Fire Safety Protection Combining Zone located in or adjacent to the Very High Fire Hazard Severity Zone (VHFHSZ), as defined by the State of California.
- Amend the S-9 Zoning Map overlay to update areas where, due to their location in or adjacent to a designated VHFHSZ and on a narrow street less than 26 feet in width or long cul-de-sac that does not meet the City's minimum street width standards, only one internal conversion ADU or JADU per lot will be allowed (except when findings for an exception can be made to allow newly constructed attached or detached ADU instead).

In addition to the proposed Ordinance amendments, the Planning Commission has asked City Council to consider a modified recommendation as set forth in the Legislative History section below.

Without a compliant local ADU ordinance, all existing local ADU regulations are null and void and any proposed ADUs or JADUs are a subject to default minimum standards set forth in State ADU law. Also, interpretation of state law is a complicated process for public, resulting in inefficiencies and misunderstandings about the requirements. Once a compliant local ordinance is in-place, staff will create clear and detailed summaries and/or guides for the public and staff to follow. This will make the ADU application process easier, expedite the approval process and increase the efficiency in production of much needed units of housing. In addition, the proposal includes allowances that go beyond the State law requirements, designed to increase production of much-needed additional units of housing.

## **BACKGROUND / LEGISLATIVE HISTORY**

### ***Project History***

On February 16, 2016, the City Council adopted Ordinance No. 13357 C.M.S., which revised the City's Secondary Unit regulations that were in effect at that time. The purpose of the changes was to encourage construction of more Secondary Units to address the City's housing shortages and escalating housing costs.

On January 1, 2017, California Senate Bill (SB) 1069 and Assembly Bill (AB) 2299 went into effect with a similar intent as the City's February 16, 2016 changes – to streamline housing production and encourage the construction of more Secondary Units. In response to the new legislation, the City Council adopted Ordinance No. 13435 C.M.S on May 2, 2017, which again revised the City's Secondary Unit Regulations primarily with respect to types and sizes of ADUs, parking requirements in transit-accessible and historic areas, approval processes and timelines, and establishing a new Zoning Overlay Zone (S-9 Fire Safety Protection Combining Zone) that identified areas with road widths less than 20 feet in width or along long dead-end roads within the "Very High Fire Hazard Severity Zone" (VHFHSZ) where Category Two ADUs were not permitted. These amendments brought the City's Secondary Unit Ordinance into compliance with the State law that was in effect at the time.

On January 1, 2020, and January 1, 2021, several amendments to Government Code §65852.2 and §65852.22, went into effect to further encourage statewide production of ADUs by developing a ministerial approval process for certain types of ADUs. California AB 3182 (2020), AB 68, AB 881, AB 578, AB 670, AB 671, and SB 13 (collectively passed in 2019 and effective on January 1, 2020) introduced several important changes and limitations regarding how local governments can regulate ADUs. As before, if a municipality does not update its ordinance to be consistent with the newly adopted State law requirements, the local ordinance is superseded by State standards. In the meantime, the City is currently implementing State law through administrative guidance documents and handouts that include a checklist of what is allowed by State law.

In response to the inconsistency between the City's existing Secondary Unit Ordinance and State law, staff has proposed amendments to the Oakland Planning Code related to "Secondary Units" (to be renamed "Accessory Dwelling Units" or "ADUs" throughout the Planning Code). These proposed amendments related primarily to Chapters 17.09, 17.88, and 17.103 and attached hereto in ***Attachment A***.

On April 15, 2021, the Zoning Update Committee (ZUC) reviewed and discussed the proposal during a public meeting. After taking questions and comments from the public, the ZUC members directed staff to address several issues. One issue of high importance related to comments from the public that the Oakland S-9 Fire Safety Protection Combining Zone Map Overlay should include the entire VHFHSZ as designated by the California Department of Forestry and Fire Protection (CAL FIRE), due to concern that additional density in the hills would create emergency evacuation bottlenecks/choke points during wildfires. CAL FIRE designates VHFHSZs throughout the state in areas that have especially high probability of severe wildfires (see ***Attachment B*** for a map of the VHFHSZ in Oakland). Due to these public safety concerns, ZUC members tasked staff to study broadening the S-9 Overlay Zone to cover a larger area within the VHFHSZ as designated by CAL FIRE.

After consultation and further analysis with the Oakland Fire Department (OFD), staff proposed revisions to the Planning Code amendments and S-9 Overlay Zone Map to cover all areas in or adjacent to the VHFHSZ and to prohibit ADUs within this expanded S-9 Overlay Zone. This proposal was presented at the June 2, 2021 meeting of the Planning Commission. After presentations by Planning and OFD staff, and after receiving approximately 50 public comments and questions, the Planning Commission recommended to continue the ADU proposal to a date uncertain, and asked staff to refine the proposal based on public comments received, including the development of a more nuanced or "surgical" approach to the S-9 Fire Safety Protection Combining Zone Map Overlay where ADUs should be limited. The Planning Commission also requested that staff engage in further discussions with the California Department of Housing and Community Development (CA-HCD) regarding the proposal of other items that were described by public comments and the Commission. State law delegates authority to CA-HCD to implement and interpret the State law requirements for ADU regulation.

Responding to direction from the Planning Commission for a more balanced approach to restricting ADUs within the VHFHSZ than the originally proposed option for a blanket prohibition of ADUs and JADUs in the entire VHFHSZ, Planning staff worked with OFD, OakDOT, and the City Administrator's Office to develop two options for narrowly tailoring regulation of ADUs in fire-prone areas.

Option One: Prohibit all ADUs and JADUs within an expanded S-9 Overlay Zone that is applied to all areas designated as a VHFHSZ, or immediately adjacent to it, and where street pavement width is less than 26 feet. This option covers more area than the original S-9 Overlay Zone that included streets of less than 20 feet, but does not cover the entire VHFHSZ as proposed at the June 7, 2021 Planning Commission meeting. A street would need to be at least 26 feet wide until it intersects with another 26-foot-wide street to allow for ADUs.

Option Two: Only allow one internal ADU or JADU within an expanded S-9 Overlay Zone that is applied to all areas designated as a VHFHSZ, or immediately adjacent to it, and where street pavement width is less than 26 feet; and that the following fire safety requirement is also applied:

- A fire sprinkler system is installed throughout the main residence and the newly created internal ADU or JADU if the primary structure is also newly created or significant remodeling work is required to the existing primary structure. A significant remodeling is a project that has a total construction cost of \$100,000 or more, or as required by Section 15.12.030, Chapter 4909.17.2: "when modifications are over 500 square feet or when modifications are made that increase the gross floor area greater than 50% or when the modification exceeds 3,600 square feet."

A full discussion of the originally proposed options is in **Attachment C**. In addition, a letter of support from OFD Chief Freeman is in **Attachment F**. At the September 15, 2021 Planning Commission meeting, staff presented these two options. After hearing public comments and a period of discussion, the Planning Commission voted unanimously to select "Option Two" (with caveats discussed below) for ADU regulation in the proposed expanded S-9 Overlay Zone. Option

2 allows one internal conversion ADU or JADU per lot when a fire sprinkler requirement is met, while prohibiting other newly constructed attached and detached ADUs in S-9 Overlay Zone.

The Planning Commission's recommendation is as follows:

1. Affirm staff's environmental determination.
2. Approve the proposed Code amendments, including Option Two regulating ADUs in S-9 Overlay Zone, with a caveat that the option does not include a requirement for fire sprinklers and that
  - a. City Council to consider potential equity outcomes related to implementation of this ordinance.
  - b. City Council to consider a mechanism for an exception process, examples being:
    - i. Documentation of adequate egress;
    - ii. Documentation of adequate parking; or
    - iii. Medical/accessibility issues
3. Approve Zoning Map Amendments as related to ADUs.

With Planning Commissioner Chair Manus adding:

4. Consider adding to Option Two use of comparable fire protections such as fire-resistant building materials.

## **ANALYSIS AND POLICY ALTERNATIVES**

The following section summarizes the proposed substantive changes to the Planning Code Text and Zoning Map, discusses the Planning Commission's additional recommendations:

### **I. CITYWIDE PLANNING CODE AMENDMENTS**

An explanation of the most important amendments to the Planning Code intended to conform to State law is provided below. For more detail, please see Sections 17.09.040, and 17.103.080 as well as Chapter 17.88 of the Planning Code in **Attachment A**.

- A. Allowing one interior, attached or detached ADU, and one Junior ADU or JADU per one single-family lot.
- B. Allowing at least one interior ADU in multifamily buildings, up to a number equal to 25 percent of the existing units, that involve conversion of non-habitable space within the existing structure.
- C. Allowing up to two detached ADUs of 800 square feet each on two-family and multifamily lots. These ADUs may be attached to each other without a setback in between or placed on top of each other to preserve valuable open space.

D. Allowing for conversion of existing accessory buildings such as carports and garages into ADUs with no parking replacement requirement if the parcel is within ½-mile walking distance of public transit.

E. Introducing of Category Three ADU on Two-Family and Multifamily Lots:

In response to a public comment and following coordination with CA-HCD, staff added a category of an attached ADU that may combine both converted space within an existing envelope of a multifamily building and a newly built addition to a building footprint. Consistent with State law and CA-HCD guidance, creation of this type of ADU precludes creation of any other types of ADUs on the multifamily lot.

F. Allowing for up to 1,200 square feet for Category One interior conversion ADUs.

G. Increasing Maximum ADU Height:

In response to public comments and to allow two-story ADUs with smaller footprints to preserve rear-yard open space, staff increased the maximum height from the minimum 16 feet required by State law to 18 feet if an ADU complies with the minimum four-foot side and rear setbacks required for detached ADUs. This extra height allowance beyond the State law minimum standard is only available for ADUs proposed to the rear of the primary structure and excludes ADUs in the S-9 Overlay Zone for public safety reasons.

This is in addition to the allowance for ADUs with a height greater than 18 feet if the proposal meets all setback and height requirements of the underlying zone. In this case, the height of the ADU is controlled by the underlying zoning district regulations for primary structures.

H. Expanding Building Envelope Expansion for Category One ADU Conversion on Small Lots:

State law includes an expansion of up to 150 square feet for the sole purpose of ingress and egress when converting an existing accessory structure to a Category One detached ADU, or when converting interior space of a primary dwelling to a Category One ADU. To allow more flexibility in creating livable ADUs, staff recommends allowing additional envelope expansion as part of the conversion or replacement of existing accessory structures on Small Lots for the purpose of creating one (1) Category One ADU with a total resulting structure footprint no greater than 800 square feet, with the height of the proposed addition no more than 16 feet. This would allow converting an existing structure that might be too small and undesirable to inhabit, into a livable ADU, while preserving at least 50 percent of the yard as open space. This proposal would exceed the minimum requirements of the State law. Also, since conversion of an existing structure is a less expensive way of creating an ADU, this allowance makes creation of ADUs more equitable. A small lot is defined for the purpose of this regulation as a lot no greater than 3,000 square feet in size or no greater than 35 feet in lot width mean, which would capture a large share of existing lots in historically disadvantaged areas of the city.

I. Introducing Objective Design Standards:

Introduction of several straightforward and objective design requirements that apply only to structures rated "A," "B," or "C" by the Oakland Cultural Heritage Survey for ministerial review along with an option for an alternative path through Small Project Design Review for ADU applications varying from the objective standards. The objective design standards are applicable to ADUs that are visible from the public right-of-way and require building elements like roof pitch, exterior wall materials, predominant door and window trim, sill, recess, and style to visually match those elements of the primary structure. The proposal also includes an option for going through small project design review for projects that prefer not to follow the objective design standards, offering more flexibility to applicants.

J. Adding Landscaping Standards for New Category Two ADUs:

A requirement to plant one new tree per every 500 square feet of detached ADU floor area. When required, any new tree within the public right-of-way planted to meet this requirement is to be approved by the Department of Public Works and conform with the City's current Tree Division list.

K. Allowing ADUs in Front Setback:

State law mandates one ADU of a minimum size (800 square feet and 16 feet high) to be exempt from this zoning requirement if the lot's configuration precludes creation of the ADU anywhere else on the lot.

L. Clarifying Category One Internal Conversion: To respond to a public request to clarify a requirement of the State law regarding Category One internal conversion ADUs, staff made a change in Table 17.103.02 of the Planning Code to reflect CA-HCD's interpretation of State law to say that "one (1) or up to 25% of existing units" is allowed per two-family or multi-family building instead of per two-family or multi-family lot.

M. Adding a Planning Code Amnesty Program and Enforcement Delay of Building Code for Existing Unpermitted ADUs:

Creation of a Planning Code Amnesty and Building Code Enforcement Delay Program is proposed to provide property owners with qualifying unpermitted ADUs an opportunity to request: (1) the waiver of any provision of the underlying zoning or applicable development standards that would preclude the preservation of an unpermitted ADU that can be verified to have been established and occupied prior to January 1, 2021; and (2) the delay in enforcement of the Building Code, and local amendments thereof, as adopted under Oakland Municipal Code (OMC) Title 15 if the unpermitted ADU was built prior to the effective date of these new regulations.

This proposed new Program will also be implementing State law requiring that local governments grant a five (5) year enforcement delay of noncompliant or unregistered ADUs built in violation of the Building Code: (1) prior to January 1, 2020 or (2) on or after January 1, 2020 during the time the City had a noncompliant ordinance so long as the City adopts a compliant ordinance. Under this Program, the City has the right to grant the five (5) year enforcement delay until January 1, 2030. This delay in enforcement does not apply for structures that pose immediate risks to public health and safety. The proposed code amendments include an allowance to bring qualifying existing unpermitted ADUs into

compliance with current Building Code standards without incurring any enforcement penalties or fines for up to five years from the date of the granting of the enforcement delay. Since an enforcement delay cannot be granted on or after January 1, 2030, the latest the five-year enforcement delay can be in effect for a specific ADU is December 31, 2034. Accordingly, State law authorizing this program will sunset on January 1, 2035.

N. Including Emergency Access Requirements:

Staff recommends restrictions for ADUs that are on streets that are less than 26 feet in width or accessed by a dead-end street that is longer than 600 feet in the S-9 Overlay Zone, due to concern that the additional cars owned by new ADU residents would cause or worsen existing access issues on these roads during emergency evacuations. A detailed discussion of the proposal is provided in the next section below.

## II. GEOGRAPHICALLY SPECIFIC ZONING MAP AMENDMENTS

In addition to the text changes, the Zoning Map would be amended as follows:

Amend the existing S-9 Zoning Map Overlay (S-9) to include areas that are located, in whole or in part, within or immediately adjacent to State-designated VHFHSZ and where the street pavement is less than 26 feet in width, in addition to areas accessed by cul-de-sacs (dead end streets) over 600 feet in length that are included in the existing S-9 Overlay Zone criteria adopted in 2017. The purpose of this amended overlay would be to prohibit attached and detached ADUs, while still allowing one internal conversion ADU or JADU per lot, according to the Planning Commission's recommendation for regulatory Option Two, discussed in detail in **Attachment C** and at the end of this section.

This map amendment would expand the original S-9 Overlay Zone based on 20 feet-wide streets from approximately 7,000 residential lots to approximately 12,000 lots. However, it would still cover fewer lots than the entire VHFHSZ that has approximately 19,000 lots. An overall map showing all three zones is provided in **Attachment B**. A more detailed map of the proposed expanded S-9 is included in **Attachment E**.

In some areas, the proposed S-9 layer is not perfectly aligned with State's VHFHSZ geographic information system (GIS) layer. This is because of a number of pre-existing "anomalies and ambiguities" in CAL FIRE's GIS maps. Staff has identified and described these anomalies to both the Planning Commission in staff reports and to CAL FIRE during a separate meeting. The mapping ambiguities include a) VHFHSZ boundary alignment issues with lot lines, road centerlines, zoning boundaries and the City boundary; b) issues stemming from the inherent low resolution of the VHFHSZ layer, and c) issues with "pixelation" of the VHFHSZ edges due to the input data cells that are larger than 1 acre, resulting in VHFHSZ boundary looking pixelated or "toothed." This results in VHFHSZ sometimes covering or omitting lots within the same block and facing same street seemingly at random. Staff has met with CAL FIRE to outline the issues and specific map areas where edits were necessary to produce a more refined S-9 layer and received approval for such edits. As a result of this mapping refinement, additional minor changes have been made to the S-9 Overlay Zone at the September 15<sup>th</sup> Planning Commission meeting resulting in a removal of approximately 90 lots from the S-9 Overlay Zone. No



new lots have been added to the S-9 Overlay Zone since the September 15<sup>th</sup> meeting. The updated and final S-9 Overlay Zone map is shown in **Attachment E**.

### III. DISCUSSION OF PLANNING COMMISSION RECOMMENDATION

In addition to selecting the less restrictive Option Two, Planning Commission introduced several modifications to the option in their recommendation to the City Council:

- A. *“Recommend City Council approve the proposed Code amendments including Option Two regulating ADUs in S-9 Zone, with a caveat that the option does not include a requirement for fire sprinklers.”*

Following the Planning Commission recommendation, staff removed this proposed requirement from the draft Planning Code amendments.

- B. *“Consider comparable fire protections such as fire-resistant building materials in lieu of the sprinkler requirement.”*

Staff considered the Planning Commission's recommendation for additional fire-resistant building material requirements in VHFHSZ to increase fire safety, and after consulting with Building experts found that 2019 California Building Code (CBC) Chapters 7 and 7A and 2019 California Residential Code (CRD) Section R337 include comprehensive fire safety requirements for structures in VHFHSZ or wildland-urban interface (WUI) areas statewide. Section 7A of the CBC states: *“The purpose of this chapter is to establish minimum standards for the protection of life and property by increasing the ability of a building located in any Fire Hazard Severity Zone within State Responsibility Areas or any Wildland-Urban Interface Fire Area to resist the intrusion of flames or burning embers projected by a vegetation fire and contributes to a systematic reduction in conflagration losses.”*

The CBC and CRC standards are enforced locally by the City's Building Bureau during project evaluation and issuance of the building permit, including applications when ADUs or JADUs are proposed. The extensive requirements include specific ignition-resistant exterior wall and roof materials, fire-rated wall, floor and roof assembly standards, ignition-resistant windows, doors, and provisions for building systems like ventilation. The requirements apply to all projects, including interior conversions, when there is a change in occupancy. Since an ADU or JADU proposed in the VHFHSZ and S-9 Overlay Zone would already trigger the requirements of CBC Chapter 7A and all other regularly applicable Building Code requirements, staff believes that adding any of these requirements to the Planning Code would be redundant in this case.

Therefore, staff did not include this in the proposed Planning Code amendments.

- C. *“Consider a mechanism for an exception process, examples being:*  
a. *Documentation of adequate egress;*  
b. *Documentation of adequate parking; or*  
c. *Medical/accessibility issues.”*

The Planning Commission recommended an exception process for the Option Two regulatory approach in the modified S-9 Overlay Zone, which would allow for creation of other ADU categories instead of allowing one Category One internal conversion ADU or one JADU per lot if the following exception criteria are met: (1) there is adequate ingress/egress to the site; (2) adequate on-site parking is provided; or (3) medical/accessibility issues necessitate the exception. An applicant who meets the exception criteria would be allowed to create one of the following ADU types as defined in Planning Code Chapters 17.09.040 and 17.103.080: one newly constructed detached or attached ADU (Category Two); or one converted detached or attached ADU (Category One). This applies to both single-family, two-family, and multi-family lots in the S-9 Overlay Zone.

- i. Staff investigated applying the “adequate egress” recommendation and was unable to find a workable solution that does not place significant burden on Planning staff evaluating each ADU proposal in S-9, or significantly limit the area where ADUs would be allowed. Staff believes that the minimum emergency access standards such as at least 26 feet wide roads and no more than 600 feet long dead-end streets already serve as sufficient adequate egress standard.
- ii. Staff recommends requiring documentation of at least one (1) parking space per ADU in addition to documentation of any regularly required parking for the primary residence (see draft Planning Code Amendments Section 17.88.050.B.1 at **Attachment A**). Also, any lost parking spaces as a result of creating the ADU must be replaced on the lot. The documentation must be submitted as a part of a proposed site plan for any attached or detached ADU (including within an existing detached garage). Provision of sufficient off-street parking is one of the key components of fire safety because illegal street parking on narrow streets in VHFHSZ may create deadly “choke points” during evacuations. Illegally parked cars also block the fire apparatus and other emergency vehicles from accessing a fire or emergency and saving lives. The Planning Commission staff report in **Attachment C** and **D** provides the full discussion of the choke points issue in VHFHSZ.
- iii. To accommodate an exception for medical and/or accessibility reasons, staff proposes to use an existing application and an established process for Reasonable Accommodation pursuant to OMC Chapter 17.131. Staff recognizes the need for flexibility on steep lots in VHFHSZ where access to a primary residence may require climbing multiple stairs. For example, an ADU in a converted detached garage located on street level could serve as a dwelling for a person with limited mobility. Another example is a caregiver living in an ADU that is located elsewhere on the lot if an internal ADU or JADU is not feasible. The Reasonable Accommodation Request must include a reason for the exception. While no additional ADU parking is required for this exception, any lost parking spaces must be replaced elsewhere on the lot.

Therefore, staff included an exception process for medical and/or accessibility reasons in the proposed amendments.

D. *“Consider potential equity outcomes related to implementation of this ordinance.”*

This proposal is trying to balance the demand for more housing with the real dangers to public safety in VHFHSZ. This balancing act is not an easy task, and it has raised some important questions, such as:

- Should the City limit density in this historically more affluent area of Oakland?
- Should the City allow more people to reside in high-risk areas when wildfires continue to devastate communities around the state year after year?
- What kind of housing is being created in VHFHSZ and for whom?

These and many other questions have been considered in developing the current proposal that allows internal conversion ADUs on any residential lots in the S-9 Overlay Zone, while restricting newly constructed attached and detached ADUs. Concerns have been raised during Planning Commission hearings that by restricting ADUs in the S-9 area, this affluent area would ultimately not contribute to the overall housing production goals and therefore preserve the "Hills" as an unaffordable enclave for the existing population. Lots and homes in VHFHSZ are large and very expensive, excluding most people except the very wealthy from living there and taking advantage of public resources like schools, clean air, and safety this area provides. At least in theory, ADUs would allow residential tenants and families across the socio-economic spectrum to move this area.

However, while ADUs add to the overall housing stock, they do not have deed-restricted affordability requirements and can be rented at market rate. A detached ADU in an area like the Oakland Hills would not be required to be rented at below market rate and therefore would be unlikely to be affordable for tenants that would normally qualify for low-, very low-, or extremely low-income affordable housing units. This is partially because of the high cost of construction for a new detached or attached ADU structure in VHFHSZ, because of the area's steep slopes and building requirements to make structures seismically sound and fire-resistant. The high costs of construction are likely to be passed along to a tenant at a full market rate rent, making rental of an ADU in VHFHSZ available only to more affluent tenants, or relatives of the families occupying the primary dwelling. Together, factors such as lack of affordability controls, high costs of construction, premium location, near-full car dependency because of lack of access to transit (when a car is required this adds to the cost burden of a household) and other factors will likely produce ADUs that are not affordable to a large percentage of Oaklanders. According to the Oakland Equity Indicators report, about half of Oakland households are rent burdened, which means people spend more than 30 percent of their income on housing.<sup>1</sup> While the goal of the ADU legislation is to create more housing units, building more expensive housing will not solve the affordable housing issue or improve the situation of people in need of cheaper housing.

In comparison, internal conversion ADUs and JADUs are much cheaper to build than detached or attached ADUs since they usually don't require new foundations, exterior walls, new roofs, and many other expensive building assemblies. Therefore, internal conversion ADUs and JADUs, allowed in the proposal for S-9 Overlay Zone, may offer a

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<sup>1</sup> Oakland Equity Indicators Report p.89  
<https://cao-94612.s3.amazonaws.com/documents/2018-Equity-Indicators-Full-Report.pdf>

more affordable unit of housing to support multi-generational households, provide a more affordable rental unit, or create a space for a caretaker or a friend while keeping the same footprint of the primary structure. Houses in VHFHSZ are often large and can easily accommodate an additional unit, making this option a better solution for creating a supply of more affordable units than fully detached structures. Thus, the internal conversion ADUs are a better solution to the housing shortage and affordability, while also potentially creating fewer vehicles per each additional unit and reducing the amount of structure "fuel" available to a wildfire. In addition, it is more affordable to bring an existing structure into compliance with the latest Building and Fire Codes when converting a space to an ADU. This would create a safer and more resilient housing stock overall in the face of wildfires.

Another important factor to consider along with population density is very high car ownership and strong reliance on private vehicles in the Oakland Hills. People rely on private vehicles because public transit is not a viable option in most cases. Most residents do not have convenient access to a major transit stop and must drive to reach an effective mode of transit or where they need to go. Also, the streets are very steep and often do not have sidewalks or bicycle lanes for people to walk or bike.

After the devastating Tunnel Fire in 1991, these highly fire-prone areas were allowed to develop in the same manner, and the population grew as a result. With the probability of wildfires growing persistently with each year, allowing uncontrolled growth in the number of vehicles ADUs bring is a high-risk option. This Ordinance amendment would allow an opportunity for a more balanced approach, as requested by the Planning Commission, that would potentially decrease the known risks of choke points during emergency evacuations while still allowing ADUs.

The proposed S-9 Overlay Zone expansion, covers approximately 14 percent of all residential lots in Oakland, leaving significant portions of the City where all ADU types are encouraged by this proposal. Those remaining 86 percent of lots are often located in areas with more adequate infrastructure than in the S-9 Overlay Zone and with significantly better access to transit. Staff recommends adding more density in transit rich areas with easy access to amenities, where reliance on personal cars is significantly lower than in the S-9 Overlay Zone. Allowing more ADUs in these areas is more environmentally friendly and will not require a tenant to have a car to get around.

In addition, communities recently devastated by wildfires in Santa Rosa, Paradise, Ventura and other places across California experienced mass displacement of residents, and ultimate loss of housing for hundreds of thousands of people. It will take many years for these cities to rebuild, even in the best of economic times. A recent study by University of California Berkeley Center for Community Innovation states that in 2018 alone, an estimated 350,000 California residents were forced to flee as result of wildfires, and while many of them came back and rebuild, many experience long-term displacement or decide not to return at all. This displacement impacts renters and lower-income households the most and exaggerates the "inequities of post-recovery process."<sup>2</sup> This is another reason staff believes that building more housing in areas where it is safe, sustainable, and affordable makes for best planning practice.

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<sup>2</sup> "Rebuilding for a Resilient Recovery" by Next 10 and UC Berkeley Center for Community Innovation.  
<https://www.next10.org/publications/rebuilding-resilient>

Staff recommends that the City Council approve the Planning Code amendments as revised in response to the Planning Commission comments. Alternatively, the City Council could direct staff to undertake further analysis or revisions.

### **FISCAL IMPACT**

If adopted by the City Council, there will be no direct fiscal impact or costs to the City. Implementation of these ADU Ordinance amendments will be a routine component of ministerial project review and approval administered by the Department of Planning and Building, which collects fees for such review and approvals as established in the City's 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 / INTEREST**

Throughout the ADU Ordinance amendment process, staff has met multiple times with external interested parties and stakeholders to discuss the proposed changes to the existing ADU regulations, including the California Department of Housing and Community Development, CAL FIRE, Casita Coalition, Oakland Firesafe Council, planning staff from neighboring cities, as well as Oakland residents. Three public hearings have been held to date: one at the Zoning Update Committee meeting on April 15<sup>th</sup>, 2021, and two Planning Commission hearings on June 2<sup>nd</sup> and September 15<sup>th</sup>. Staff mailed postcards in VHFHSZ to notify residents of the Planning Code changes and the Planning Commission hearing on June 2<sup>nd</sup>. In addition, staff maintains and updates a public website with all relevant information and sends email notifications to the public on ADU-related mailing lists to provide updates or notification of upcoming hearings. Website The proposed amendments have been shaped in many ways by this external outreach process.

### **COORDINATION**

This report and legislation have been reviewed by the Office of the City Attorney and by the Budget Bureau. The Planning and Building Department coordinated extensively with the Oakland Fire Department, Oakland Department of Transportation, and the City Administrator's Office in the preparation of these recommended Ordinance amendments as well as this report and legislation.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** The amendments to ADU/JADU regulations are intended to encourage the 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 are built within established neighborhoods, they can contribute to fostering 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 allow for multi-generational households or provide a place for a caretaker. However, it is important to note that ADUs do not have an affordability requirement, so most ADUs, if rented out, could demand a market price for the area.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The proposed amendments to the Planning Code rely on the previously certified Final Environmental Impact Reports for 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, 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).

The proposed amendments to the Planning Code 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. As a result, 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 or 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). Further, 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).

### **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 15<sup>th</sup>, 2021.

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

Respectfully submitted,



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Director, Planning and Building Department

Reviewed by:

Laura Kaminski, Strategic Planning Manager

Prepared by:

Ruslan Filipau, Planner III  
Planning and Building Department

Attachments (6):

- A. Proposed Planning Code Text Amendments
- B. Overall maps of the VHFHSZ, the existing S-9 Overlay Zone, and the proposed S-9 Overlay Zone expansion
- C. Planning Commission Staff Report from September 15<sup>th</sup>, 2021 (without attachments)
- D. Planning Commission Staff Report from June 2<sup>nd</sup>, 2021 (without attachments)
- E. Detailed maps of the proposed S-9 Overlay Zone
- F. Letter of Support from Oakland Fire Department