

***City Planning Commission*****STAFF REPORT**

Case File Number ZA21006

June 2, 2021

<b>Location:</b>	Citywide
<b>Proposal:</b>	Amend the Planning Code for Accessory Dwelling Units (ADUs) – currently termed Secondary Units in the Planning Code – to bring the local ordinance into compliance with recent State legislation. The major proposed amendments include: 1) new standards for the processing, number, size, height, parking, location, landscaping, and setbacks for the construction of new ADU structures and ADUs within existing accessory buildings, single-family homes, and two-family and multi-family buildings; 2) establishment of regulations for Junior Accessory Dwelling Units (JADUs) within single family homes; 3) introduction of objective standards to streamline approval of ADUs; 4) objective standards for the design and location of ADUs; 5) regulations for ADUs in mini-lot developments; and 6) the prohibition of all ADUs and JADUs within the “Very High Fire Hazard Severity Zone,” as designated by the State of California; and amendment of the S-9 Zone Map boundary to align with the “Very High Fire Hazard Severity Zone.”
<b>Applicant:</b>	City of Oakland
<b>Case File Number:</b>	ZA21006
<b>General Plan:</b>	Citywide
<b>Zoning:</b>	Citywide
<b>Environmental Determination:</b>	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).
<b>City Council District:</b>	All districts
<b>Staff Recommendation:</b>	Planning Commission will receive public comment, discuss, and make recommendation to City Council to adopt legislation as set forth in the Staff Report.
<b>Finality of Decision:</b>	Recommendation to City Council; Final decision by City Council
<b>For Further Information:</b>	Contact case planner <b>Ruslan Filipau</b> at <b>510-238-3491</b> or <b>rfilipau@oaklandca.gov</b>

**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), which are currently termed “Secondary Units” in the City of Oakland Planning and Municipal Codes. 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 regulations. The proposed Planning Code amendments encourage ADUs by reducing regulatory barriers by introducing objective development standards and streamlined approval processes consistent with State law.

**BACKGROUND**

On February 16, 2016, the City Council adopted Ordinance No. 13357 C.M.S., which revised the City’s Secondary Unit regulations. The purpose of the changes was to encourage construction of more Secondary Units to address the City’s housing shortages and escalating housing costs (“City Secondary Unit Ordinance”).

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 Map Overlay) that identified areas within the “Very High Fire Hazard Severity Zone” where Category 2 ADUs are not permitted. These amendments brought the City’s Secondary Unit Ordinance into compliance with the State laws that were in effect at the time.

On January 1, 2020, and January 1, 2021, a number of amendments to Government Code §65852.2 and §65852.22, went into effect to encourage Statewide production of ADUs even further by developing a ministerial approval process for certain types of ADUs. California Assembly Bills (AB) 3182 (2020), AB 68, AB 881, AB 578, AB 670, AB 671, and California State Bill (SB) 13 (collectively passed in 2019) introduced several important changes and limitations regarding how local governments can regulate ADUs. As before, if a municipality does not update its ordinance to be consistent with the newly adopted State 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.

Below is a summary of recent changes in State ADU laws relevant to the proposed Planning Code amendments.

*Table 1: 2020 State Law Amendments Summary*

State Laws	Code Sections	Summary	Status
AB 3182	Combined into Sections:	Introduced significant changes to ADU permit processing (60-day ministerial approval process), number of ADUs for lots with single-family and multi-family structures, size, height, setbacks, location, parking, impacts on historic resources, owner occupancy, and certain other design, development and use standards.	Amendments will be incorporated into the language of various Title 17 Sections.
AB 881	§65852.2 and §65852.22 Accessory Dwelling Units		
AB 68	§4740 and §4741 Civil Code		
SB 13	§17980.12 Health and Safety		

In response to this inconsistency between the City’s Secondary Unit Ordinance and State law, Staff has prepared proposed amendments to the Oakland Planning Code regulations related to “Secondary Units” (to be renamed “Accessory Dwelling Units” or “ADUs” throughout the Code). These proposed amendments are attached hereto at **Attachment A**.

On April 15, 2021, the Zoning Update Committee reviewed and discussed the proposal during a public meeting. After taking questions and comments from the public, the Committee members directed the planning Staff to address a few issues. One issue of high importance was a comment from the public that the S-9 Fire Safety Protection Combining Zone Map Overlay should include the whole Very High Fire Hazard Severity Zone because of concerns of evacuation bottlenecks. In order to protect public safety Planning Staff made revisions to the Planning Code amendments and S-9 Zone Map discussed in ***“Key Issues and Impacts”*** section of this report.

Other changes to the Planning Code include clarifications to: a) maximum allowed existing accessory structure building envelope expansion for conversion to Category One ADU in small lots; b) the minimum ADU size; c) objective design standards; and d) landscaping standards for new Category Two ADUs. All newly introduced changes to the proposed Planning Code language after public comments and suggestions received at the Zoning Update Committee (ZUC) are highlighted in yellow in the **Attachment A**. Some of these topics are discussed in more detail below in ***Changes Introduced Since the Zoning Update Committee (ZUC) Meeting***.

After the Planning Commission reviews and makes recommendations to City Council, the proposed Planning Code amendments will be considered by the City Council at a public hearing and second reading for final legislative review and adoption.

**PROJECT DESCRIPTION**

The following section summarizes the proposed changes to the Oakland Planning Code. As stated above, *Attachment A* contains the proposed Citywide text amendments to the Planning Code.

Before the summary of the proposed changes, below are definitions of the different types of ADUs allowed:

**Junior Accessory Dwelling Unit** or “**JADU**” means an Accessory Dwelling Unit that is contained entirely within the building envelope of an existing or proposed One-Family Residential Facility. It may include separate sanitation facilities or may share sanitation facilities with the primary Residential Facility, but must contain an efficiency kitchen. A JADU is not allowed as a conversion of detached or attached accessory structures. No expansion of building envelope is allowed except for an expansion of up to one hundred fifty (150) square feet for the exclusive purpose of ingress and egress to the JADU. Owner occupancy is required in the JADU or the primary Residential Facility. The owner of the JADU is required to record a deed restriction setting forth these requirements.

“**One-Family Category One ADU**” means an Accessory Dwelling Unit that is a conversion of space within a One-Family Residential Facility or an associated accessory structure, legally existing as of January 1, 2020, or an associated accessory structure that is rebuilt pursuant to the requirements set forth in Table 17.103.01 of Section 17.103.080.

**Multifamily Category One ADU** means an Accessory Dwelling Unit that is a conversion of existing, non-habitable space, such as storage rooms, boiler rooms, passageways, attics, basements or garages located within portions of Two-Family or Multifamily Dwelling Facilities legally existing as of January 1, 2020. Non-habitable space does not include detached accessory structures, existing residential units, commercial space, community rooms, gyms, laundry rooms or any finished spaces that are meant to be occupied by people and used communally.

**One-Family Category Two ADU** means a newly constructed attached or detached Accessory Dwelling Unit on a lot with an existing or proposed One-Family Dwelling Residential Facility. A One-Family Category Two ADU may include an exterior addition to an existing primary One-Family Residential Facility for the purposes of accommodating the ADU.

**Multifamily Category Two ADU** means a newly constructed detached Accessory Dwelling Unit, or a conversion of an existing detached accessory structure, on a lot with existing Two-Family or Multifamily Dwelling Facilities legally existing as of January 1, 2020. The converted detached Category Two ADU(s) is either: (a) within the building envelope of an existing detached accessory structure and involves no expansion of existing building envelope; or (b) within a rebuilt detached accessory structure built in the same location and to the same exterior dimension as the existing detached accessory structure(s).

The new State legislation mandates that local governments comply with a number of new ADU regulations. The most important new regulations and changes to Planning Code are:

- Required ministerial approval for one interior, attached or detached ADU, and one Junior ADU or JADU<sup>1</sup> per one single-family lot. If a detached, Category 2 ADU is proposed, the City must ministerially approve an ADU that is up to 800 sf, 16-ft in height, and maintains 4-ft rear and side setbacks.

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<sup>1</sup> JADUs are a type of ADU that are no more than 500 square feet and are typically bedrooms in a single-family home that have an entrance into the unit from the main home and a separate entrance to the JADU from the outside. The JADU must have an efficiency kitchen, including a sink, but is not required to have a private bathroom.

- Required ministerial approval of at least one interior ADU on multifamily lots, up to a number equal to 25% of the existing units, that involve conversion of non-habitable space within the existing structure.
- Allowance for no more than two detached ADUs on two-family and multifamily lots.
- Allowance 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.
- New standards for the processing, size, height, location, landscaping, and setbacks for the construction of new ADU structures and ADUs within existing accessory buildings, single-family homes, two-family and multi-family buildings.
- Prohibiting ADUs in State defined “Very High Fire Hazard Severity Zones” due to impacts on traffic flow and public safety during emergencies. This topic is discussed thoroughly in “*Key Issues and Impacts*” section of this report.

Once the proposed amendments are adopted, the Oakland Planning Code will be in compliance with State law. Please refer to Section 17.103.080, Tables 17.103.01 and 17.103.02 in *Attachment A* for summaries of the proposed development standards for developing and processing ADUs.

## ANALYSIS

### **Changes introduced since the Zoning Update Committee (ZUC) meeting**

The following changes were made to the Planning Code Amendments after the ZUC meeting that was held on April 15, 2021:

#### a) Building Envelope Expansion for Category One ADU Conversion on Small Lots

The State law allows an expansion of up to 150 square feet for the purpose of ingress and egress when converting or replacing an existing accessory structure to a Category One detached ADU. This Planning Code proposal is fully compliant with the State mandate. To allow more flexibility in creating livable ADUs, the Staff recommends allowing 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, and 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 conversion ADU, while preserving at least 50% of the yard as open space. 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.

#### b) Minimum ADU and JADU Size Allowance

Aligning the minimum ADU and JADU size requirement with the minimum size of an Efficiency Dwelling Unit as defined in the California Building Code Section 1208.4.

#### c) Objective Design Standards

A minor adjustment has been made to the exterior wall material standard for attached and detached ADUs located at the front or side of a main building and visible from the front public right-of-way. The proposed requirement is for the exterior material to “visually match” the existing exterior material of a primary structure.

d) Landscaping Standards for New Category Two ADUs

A clarification has been added to the 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.

"Very High Fire Hazard Severity Zone" (VHFHSZ) ADU Regulations

Planning Staff - together with Oakland Fire Department (OFD), Oakland Department of Transportation (OAKDOT), and the City Administrator's Office - are highly concerned about public safety within the State designated VHFHSZ. Staff urges the Planning Commission to consider recommendations to prohibit ADUs and JADUs in this highly prone to wildfires zone of the City where the existing infrastructure cannot support the increase in population density without significantly compromising public safety because of "bottleneck" issues in traffic flow from vehicles and evacuation choke points. Please see the full proposal in the *Key Issues and Impacts* Section of the report.

**Proposed Code amendments that remain largely unchanged since Zoning Update Committee (ZUC) meeting**Regulations for Two-Family and Multi-Family Residential Facilities

State law allows at least one interior ADU or up to 25% of the existing number of units, whichever is greater, within a two-family or multi-family facility by converting portions of non-habitable space such as boiler rooms, attics, basements or garages. In addition, State law allows no more than two detached ADUs per two-family or multifamily lot. One of these detached ADUs is allowed regardless of its impact on lot coverage or usable open space. Allowing both ADUs to reduce the usable open space to below that required by the Planning Code would take away a portion or all available open space from existing two-family or multi-family facility tenants. Therefore, staff recommends allowing one or two detached ADUs per two-family or multifamily lot regardless of its impact on usable open space or lot coverage as long as the total ADU footprint does not exceed 800 square feet. Together with a proposed allowance for ADUs to exceed the minimum 16 feet height mandated by the State if the regularly required height and setbacks of the zone are met, this proposal would allow for creation of two-story ADUs and preservation of usable open space. However, in the case where the two ADUs do not reduce the open space that is required, the detached ADUs would be permitted if they meet the size standards outlined in Table 17.103.02 in *Attachment A*.

Mini-Lot Planned Unit Developments (Mini-Lot PUDs) ADU Regulations

Section 17.142.010 of the Planning Code defines a Mini-Lot Planned Unit Development as "a comprehensively designed development containing lots that do not meet the minimum size or other requirements applying to individual lots of less than sixty thousand (60,000) square feet in the zone where it is located." In other words, Mini-Lot PUDs allow a developer to subdivide a parcel into lots smaller than normally permitted so long as the resulting overall development meets all open space, setback, density, parking and other development standards for a single lot. Mini-Lot PUDs are only allowed after the granting of a Conditional Use Permit and Regular Design Review approval.

The State ADU laws do not provide specific regulations for Mini-Lot PUDs because they are a type of development that is unique to Oakland. Therefore, regulation of ADUs proposed for Mini-Lot PUDs require a local approach, especially since they create what would otherwise be substandard lots and were

meant to facilitate efficient development of infill parcels. Planning staff recommends the following amendments to the Planning Code for ADUs on Mini-Lot PUDs:

- a. ADUs in existing Mini-Lot PUDs (entitled before approval and adoption of this ordinance amendment):
  - The addition of an ADU to an existing Mini-Lot PUD would require the revision of the existing Conditional Use Permit (CUP), and possibly revisions to the Tentative Parcel Map if a Final Map has not been obtained.
  - The development will need to meet the access, setback, usable open space, and parking standards required for Mini-Lot PUDs.
- b. ADUs in proposed Mini-Lot PUDs after the effective date of these Planning Code amendments:
  - Require the project site plan to show the location for all proposed ADUs.
  - The development will need to meet the access, setback, usable open space, and parking standards required for Mini-Lot PUDs.
  - After the Mini-Lot PUD has been entitled, any proposed additional ADUs shall require a revision of the original Conditional Use Permit.

#### Historic Resources

Preservation of historic resources has been a priority for the City. The Oakland Planning Code includes special regulations for properties on National, California, and Local Historic Registers, as well as properties located in designated historic districts through the Design Review process (Code Section 17.136). The new ADU legislation continues the established protections for historic resources. State ADU law allows local agencies to impose objective standards and regulations that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources (Gov. Code §65852.2).

While in most cases ADUs are placed behind main structures and away from public view, sometimes ADUs are proposed in front of a primary structure if the primary structure is set back significantly from the street, or on the side of a primary structure on a corner lot, in which case an ADU might be highly visible from the public right-of-way. These examples of ADU placements may cover, obscure or modify, to various degrees, prominent features of protected historic resources.

Therefore, City Staff recommends the following two requirements: a) allowing placement of an ADU in front of a primary historic structure only if the lot conditions or requirements preclude an ADU of a minimum required size anywhere else on the lot, and b) requiring a consultation with Historic Preservation Staff for ADU applications involving construction of a new structure, or an addition to the footprint or building envelope of an existing structure for properties in the National, California, and Local Historic Registers. This review is in compliance with the *Secretary of Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings* to ensure the ADU proposal would not cause a substantial adverse effect to the significance of the resource. Such consultation would need to occur within the 60-day ministerial approval timeline for ADU approvals subject to Government Code Section 65852.2(e).

#### Objective Design Standards

The State law allows local governments to establish a limited set of objective design requirements that can be reviewed and approved ministerially. City Staff recommends a number of straightforward and objective design requirements for ministerial review along with the 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 a primary structure.

Similarly, State law allows municipalities to establish objective controls for ADU elements like balconies, rooftop decks, exterior staircases, as well as allowing to set standards for landscaping. The staff proposes to regulate any exterior building elements listed above normally per existing underlying zone requirements. As a result of increased construction of detached ADUs, City Staff recognizes the inevitable loss of permeable surface and potential loss of vegetation. Therefore, the Planning Code amendments require at least one tree per every 500 square feet of new ADU floor area.

## **ENVIRONMENTAL DETERMINATION**

The proposed amendments to the Planning Code will rely on the previous set of applicable CEQA documents including: the Land Use and Transportation Element of the General Plan EIR (1998); the Oakland Estuary Policy Plan EIRs (1999, 2006) and Supplemental EIR (2013); the Redevelopment Area EIRs- West Oakland (2003), Central City East (2003), and Coliseum (1995); the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010) and Addendum (2014); the Coliseum Area Specific Plan EIR (2015); Broadway Valdez Specific Plan EIR (2014); West Oakland Specific Plan EIR (2014); Central Estuary Area Plan EIR (2013); and various Redevelopment Plan Final EIRs (collectively, "Previous CEQA Documents"). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, each 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 Oakland 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). In addition, each as a separate and independent basis, this action is exempt from CEQA pursuant to Public Resources Code section 21080.17 and CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (no significant effect on the environment).



**KEY ISSUES AND IMPACTS**“Very High Fire Hazard Severity Zone” (VHFHSZ) ADU Regulations

State law allows for cities to enact laws in order to protect health, safety, and welfare of their residents. Further, the new State ADU laws permit local agencies to regulate ADUs based on “the adequacy of water and sewer service, and the impacts of traffic flow and public safety.” (Gov. Code §65852.2 subd. (a)(1)(A)).

Recognizing this concern, the City Council in 2017 adopted the S-9 Fire Safety Protection Combining Zone Map Overlay (“Overlay Zone”) within which new Category Two ADUs are prohibited. The S-9 Overlay Zone was created to identify areas where the street pavement width is less than 20 feet and/or a cul-de-sac length is over 600 feet; and where the area is located, in whole or part, in a “Very High Fire Hazard Severity Zone,” as designated by the California Department of Forestry and Fire Protection (CAL FIRE)<sup>2</sup>. The Overlay Zone was mapped according to the following criteria:

- Areas accessed by streets with a pavement width of less than 20 feet. Oakland Fire Code (OMC Chapter 15.12) states that: “Fire apparatus access roads shall be all weather roads with a minimum width of 20 feet...”
- Areas accessed by cul-de-sacs (blind streets) with a length over 600 feet. OMC Section 16.16.025(D) states: “Blind streets shall not be over 600 feet in length unless it includes means of a secondary access...;” and
- Areas designated by CAL FIRE as a “Very High Fire Hazard Severity Zone”.

The purpose of this Fire Safety Protection Overlay Zone was to protect the public health, safety and welfare of Oakland residents by limiting ADUs in areas susceptible to fires and limited accessibility. However, as each season passes, California’s fire risk appears to grow, especially as a result of climate change with higher temperatures and an increase in drought conditions. Based on evolving data from recent wildfires (such as the Camp Fire in Paradise, CA), the recently completed *Oakland Local Hazard Mitigation Plan*, *Vegetation Management Plan*, and *Zonehaven* scenario software analysis for evacuation routes being developed with the expertise of the Oakland Fire Department (OFD) and Oakland Department of Transportation (OAKDOT), Staff recommends that the City prohibit all new ADUs and JADUs in the entire VHFHSZ, as designated by the State of California. This can be achieved through expanding the mapped area of the S-9 Overlay Zone to include the entire VHFHSZ, consistent with the base proposal described in this staff report; or alternatively, through the replacement of the S-9 Overlay with references in the Planning Code to the boundary of the VHFHSZ as may be amended by CAL FIRE over time. The pros and cons of each approach are discussed below.

VHFHSZs have been designated by CAL FIRE in areas throughout the State with especially high probability of severe wildfires and of a very high concern to public safety. CAL FIRE uses scientific computer models to analyze wildfire probability and expected wildfire behavior based on parameters such as weather patterns, available vegetation, terrain and other factors to map fire severity zones across the State.<sup>3</sup> Portions of Oakland that are within the VHFHSZ include areas of Oakland Hills that suffered from the devastating Oakland firestorm in 1991. The proposed map of the S-9 Fire Safety Protection Zone has been amended to match the CAL FIRE designated VHFHSZ in *Attachment B*. \* Please note that the CAL FIRE-issued VHFHSZs are subject to change by the State periodically based on their complex computer modeling. If the VHFHSZ map is modified by the State, the S-9 zone boundary would need to be updated as well to match the state designated area. The currently proposed changes to the Planning Code state the S-9 zone would automatically change to match the boundaries of the VHFHSZ.

<sup>2</sup> <https://osfm.fire.ca.gov/divisions/wildfire-planning-engineering/wildland-hazards-building-codes/fire-hazard-severity-zones-maps/>. Also see *Attachment B* for detailed maps of the VHFHSZ.

<sup>3</sup> 2021-2026 City of Oakland Hazard Mitigation Plan. April 2021. Pages 15/1 – 15/18.

Current draft of the maps in **Attachment B** is provided for illustrative purposes. (Please also see a note about the current draft of S-9/VHFHSZ maps at the end of this section.)

Staff is aware that the proposal for automatic updates to the boundary of the S-9 Zone is not the typical pathway for a zoning map change, which would normally go back to the Planning Commission and City Council before becoming effective. Therefore, with this potential for concern in mind, an alternative approach could also be considered to keeping the proposed boundary of ADU prohibition consistent with the boundary of VHFHSZ – replace the S-9 Overlay entirely with references in the Planning Code to the boundary of the VHFHSZ, as may be amended by CAL FIRE over time. Regulating by reference to a mapped area separate from the zoning map is also not typical and could present challenges to keeping the public fully informed of all relevant regulations applicable to their property, but staff feels that this can be managed through the creation of enhanced handouts and website content.

With assistance of available new software and mapping tools (*Zonehaven*) that show existing number of people, cars, structures, and available escape routes in VHFHSZs, the OFD and OAKDOT are already seeing that the current road and intersection capacity is not adequate for the existing population in the events of mass emergency evacuations, let alone if the number of units and therefore vehicles within the VHFHSZ were to increase. Using available data, *Zonehaven* allows for the ability to visualize scenarios of mass emergencies similar to the Oakland firestorm of 1991. An annotated screenshot from *Zonehaven* showing an approximate simulation of the Oakland Firestorm of 1991 attached hereto at **Attachment C**.

The results show that there is not enough time to clear intersections for people to evacuate and for emergency vehicles to access affected areas because of “choke points” that are likely to develop at key intersections during evacuations, thereby blocking the free flow of traffic throughout the VHFHSZ. Such “bottlenecks” during mass evacuations during raging wildfires are deadly. These choke points are shown to occur within Very High Fire Hazard Severity Zones on both sides of Interstate I-580 as well as Highway 13. Because the VHFHSZ is not in a very transit accessible area, any new ADUs will likely add additional vehicles to this area making the choke points even worse.

Using Paradise, CA as an example where the streets are wide and suburban in nature, new software and mapping tools show there was still a problem with traffic bottlenecks and vehicles not being able to escape in time. In the Camp Fire people perished in their vehicles as they were trying to evacuate. Examples such as these show that street widths are not the only problem with evacuation. If there are bottlenecks that cause traffic to slow down and back up in heavily wooded areas, street width will not matter.

In addition to the bottleneck issues, city infrastructure surveys show that many streets are very narrow and often have long dead ends that only allow for one route of escape in the event of an emergency such as a wildfire. Also, even though street parking is prohibited along many streets, the street signs are often disregarded, resulting in even more limited space for cars to escape quickly if the street is partially blocked. If cars are parked on a narrow street, they can also block access for emergency vehicles to access homes in emergencies such as a fire, natural disaster, or a health crisis, where it can mean the difference between life and death if the emergency vehicle cannot arrive in time. Many homes within the VHFHSZ are built on steep slopes and do not have off-street parking or have nowhere to build additional off-street parking on the lot.

Recent inventory of existing streets in the city’s “Very High Fire Hazard Severity Zone” identified multiple “choke points”: where it is difficult for a fire engine to get through because of the dimensions of a street. The Oakland Fire Department (OFD), Oakland Department of Transportation (OAKDOT), and the City Administrator’s Office have all identified accessibility/egress issues that will be exacerbated by increased units in the VHFHSZ, because new residents will likely own cars and likely park on the street. This is a foreseeable outcome, as off-street parking is not required for ADUs within a ½ mile from public transit, and replacement off-street parking for primary dwelling units is not required for ADU conversions pursuant to the recently passed State law. Any additional cars parked on the street would cause extra

blocking of narrow streets, and further slowing/blocking of both a) traffic trying to escape quickly in the event of a wildfire or other emergency, and b) emergency vehicles trying to respond to health emergencies.

With an increase in living units of any type in the VHFHSZ, Fire Department operations are impacted because additional units mean an increase in the number of people that may need assistance in the event of an emergency, the number of people susceptible to risk and accident, and an increase in the number of vehicles trying to evacuate via narrow and winding roads, creating “choke points” and stalling the free flow of cars through intersections during wildfires.

Areas of Oakland Hills that VHFHSZ covers is also referred to as a Wildland-Urban Interface (WUI) area in the *Oakland Local Hazard Mitigation Plan* (OLHMP). The WUI area is where “combustible vegetation meets combustible structures.”<sup>4</sup> These are the areas of upmost concern for the OFD. California’s SB 1241 (adopted in 2012) and AB 2140 requires local governments to update the safety elements in their general plans to recognize wildfire risks in VHFHSZ.<sup>5</sup> A draft of OLHMP has been recently reviewed by this Planning Commission and referred for approval to the City Council. This limited ADU prohibition proposal is consistent with the OLHMP and the recent State mandates to protect the public from the threat of wildfires. A brief staff analysis with more excerpts from the *Oakland Local Hazard Mitigation Plan* and *Vegetation Management Plan* are attached hereto at **Attachments D and E**. Although the VHFHSZ appears to cover a large area within Oakland, a large portion of the area covers parks and open space where no housing is allowed to be built. A map of VHFHSZ and major open spaces attached hereto at **Attachment F\***. (All maps are subject to change and are intended for illustrative purposes. Please see a note below.)

In light of the devastating historic and recent fires across California cities, including the Oakland Hills Fire in 1991, and recent PG&E Public Safety Power Shutoff events, Planning Staff and the Oakland Wildfire Prevention Group that includes staff from the Fire Department, Department of Transportation, and City Administrator’s Office, strongly recommend expanding the S-9 Overlay Zone boundaries to match the entire VHFHSZ zone, and to prohibit all new ADUs and JADUs in the VHFHSZ.

Also, for the similar purposes of emergency access discussed above, the Staff recommends prohibiting any new ADUs and JADUs on lots that are accessed by streets with less than 20 feet of continuous pavement width Citywide. For more details, please refer to Section 17.103.080A7c.

Letters of support from the Fire Chief, and the Director of Interdepartmental Operations, Office of the City Administrator are attached hereto at **Attachments G and H**.

In addition to the above findings from City Staff, the California Attorney General Xavier Becerra filed motions to intervene in recent lawsuits over a development that was approved in a Very High Fire Severity Zone in San Diego County. According to Attorney General Becerra, “[o]n the heels of another dry winter, Californians are looking toward wildfire season with a familiar pit of dread in their stomachs. Devastating wildfires have become the norm in recent years, with dozens of deaths and whole towns forced to evacuate. That’s why local governments must address the wildfire risks associated with new developments at the front end. It is imperative for public safety – and required by the law.”<sup>6</sup>

City Staff understands the need for and importance of adding more housing units to the City, but given the evidence, the addition of housing units should not be at the risk of public health and safety. There are appropriate areas for new growth and ministerial residential project approvals, and most of the City of Oakland falls within those areas. However, the VHFHSZ, with its severe high fire, access, and evacuation risks, is not an appropriate area for increased density that it cannot serve with its limited infrastructure and

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<sup>4</sup> 2021-2026 City of Oakland Hazard Mitigation Plan. April 2021. §15.1.3  
[https://cao-94612.s3.amazonaws.com/documents/2021-04-30\\_OaklandHMP\\_AgencySubmittalDraft\\_2021-05-13-231111\\_rlny.pdf](https://cao-94612.s3.amazonaws.com/documents/2021-04-30_OaklandHMP_AgencySubmittalDraft_2021-05-13-231111_rlny.pdf)

<sup>5</sup> 2021-2026 City of Oakland Hazard Mitigation Plan. April 2021. Pages 15/4

<sup>6</sup> <https://oag.ca.gov/news/press-releases/attorney-general-becerra-seeks-intervene-litigation-over-wildfire-risk-san-diego>

fire risk. Building new units that would risk not only the lives of existing residents, but new residents alike does not make for good planning practice. Also, a wildfire in the VHFHSZ will result in further displacement and housing shortage.

\* **Additional note** about current drafts of S-9/VHFHSZ Maps in **Attachments B, F**, and any interactive VHFHSZ maps that have been shared with the public prior to this meeting:

Current maps are for illustrative purposes only and are a subject to change by the State following coordination with the City of Oakland Planning Bureau. Upon close examination, the Staff identified a number of issues and mapping ambiguities with the current VHFHSZ layer issued by the State and imposed over City's base maps. The mapping ambiguities include a) VHFHSZ boundary alignment issues with some lot lines, road centerlines, zoning boundaries and the City boundary; and b) issues stemming from the inherent low resolution of the VHFHSZ layer. The staff is working on finalizing the maps by resolving any ambiguities. Updated maps will be presented to the City Council and will be available with the Staff Report prior to the City Council meeting.

**ACTION REQUESTED OF THE PLANNING COMMISSION**

Staff requests that the Planning Commission

1. Affirm Staff's environmental determination; and
2. Recommend that the City Council approve the proposed Planning Code Amendment and Zoning Map amendments related to Secondary Units, now referred to as Accessory Dwelling Units.

Prepared by:

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Ruslan Filipau, Planner III

Reviewed by:

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Laura Kaminski, Acting Strategic Planning  
Manager

Approved for forwarding to the  
City Planning Commission by:

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Ed Manasse, Deputy Director of Planning

**ATTACHMENTS:**

- A. Proposed Planning Code Amendments.
- B. Map of Proposed Amendment of S-9 Safety Protection Combining Zone to match the California Department of Forestry and Fire Protection "Very High Fire Hazard Safety Zone."
- C. Annotated screenshot of *Zonehaven* software model.
- D. Excerpts from Oakland Local Hazard Mitigation Plan.
- E. Brief Staff Analysis and Excerpts from Vegetation Management Plan.
- F. Map of Open Space Areas within the VHFHSZ.
- G. Letter from Fire Chief.
- H. Letter from Director of Interdepartmental Operations, Office of the City Administrator.