



## MEMORANDUM

**TO:** City Council

**FROM:** Brian Pedrotti, Community Development Director

**BY:** Andrew Perez, Acting Planning Manager

**SUBJECT:** Discuss and Consider Introduction of an Ordinance Amending Title 16 of the Arroyo Grande Municipal Code (AGMC) Regarding Accessory Dwelling Units and Tiny Homes On Wheels; Development Code Amendment 20-001

**DATE:** February 8, 2022

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### **SUMMARY OF ACTION:**

Introduction of the proposed Ordinance amending Title 16 of the Arroyo Grande Municipal Code regarding accessory dwelling units (Attachment 1), including provisions addressing tiny homes on wheels (THOW), will allow for adoption at a future City Council meeting and submittal to the State for final review consistent with applicable legislation.

### **IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:**

SB 2 grant funding in the amount of \$20,000 was obtained to offset costs associated with the amendments to the ADU regulations, including staffing hours, website development, and marketing materials.

### **RECOMMENDATION:**

Introduce the Ordinance amending the accessory dwelling unit regulations and establishing regulations for tiny homes on wheels.

### **BACKGROUND:**

The State legislature has identified production of Accessory Dwelling Units (ADUs) as an important strategy to increase housing statewide. In 2017, the State made significant changes to the manner by which local governments can regulate ADUs, primarily with respect to parking, types and sizes of ADUs, approval process and timelines, and utility fees. In response, the City adopted Ordinance 688 in October 2017, making local regulations consistent with State law at that time.

While State legislators acknowledged that the ADU permitting process was significantly streamlined as a result of the 2017 legislation, some were concerned that local jurisdictions' regulations, such as unit size maximums and impact fees, continued to impede property owners from constructing ADUs. As a result, in October 2019, Governor

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Newsom signed a package of new State housing bills that further amended Government Code §65852.2 and §65852.22 related to regulations for development of ADUs. As a result of this legislation, the City's Development Code, Title 16, must be amended again for consistency with State law. This update is being funded by grant money obtained through the State's SB 2 Planning Grants Program. In addition to updating the ADU regulations, the City will create a dedicated webpage for ADU development and handouts to assist homeowners in navigating the development process. The webpage will also include information about the pre-approved ADU plan program the City is participating in with the cities of Atascadero, Grover Beach, and Morro Bay. This project is funded entirely by a Regional Early Action Planning grant and will make pre-approved plans available to residents to encourage ADU development by reducing costs associated with design and review time.

#### ANALYSIS OF ISSUES:

##### State Legislation

The passage of Assembly Bills 68, 881, 587, 670, and 671, and Senate Bill 13 impacted the City's regulatory authority over the construction of ADUs. A total of six amendments to State law for ADUs were included in the 2019 legislation, made effective on January 1, 2020. Table 1 summarizes each of the six (6) amendments and how each is implemented.

**Table 1: 2019 State Law Amendments Affecting ADU Development**

Bill	Code Section	Summary	Status
AB 881 AB 68 SB 13	Government Code §65852.2 Accessory Dwelling Units & §65852.22 Junior Accessory Dwelling Units	<ul style="list-style-type: none"><li>• Allows ADUs up to 850 square feet or 1,000 square feet on any residential or mixed-use lot.</li><li>• Prohibits owner-occupancy requirement.</li><li>• Requires ministerial approval within 60 days of application.</li><li>• Prohibits impact fees on ADUs under 750 square feet.</li><li>• Prohibits minimum lot size requirements for ADUs.</li><li>• Reduces parking requirements.</li><li>• Allows one ADU plus one junior ADU.</li></ul>	Amendments proposed to Title 16 to comply.
AB 587	New Government Code §65852.22	Option for local agencies to adopt by ordinance a provision that allows an ADU to be sold or conveyed separate from the primary residence if the property was built or developed by a qualified nonprofit corporation.	Not proposed in the draft Ordinance.

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AB 670	Civil Code §4751	Removes covenants, conditions, and restrictions (CC&Rs) in a planned development that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU.	Not required to be incorporated in the AGMC.
AB 671	Government Code §65583(c)(7)	Amends housing element law and requires the City to incentivize and promote ADUs that can be offered at an affordable rent.	Addressed in Housing Element update Programs A.2-1 & A.2-2.

The proposed draft Ordinance would amend existing development standards for ADUs to address the changes required under the 2019 legislation, including allowed locations, setbacks, size limitations, parking, and owner occupancy (Exhibit A of Attachment 1), as discussed in more detail below.

#### Development Standards

Several existing property development standards are required to be amended in response to the changes to State legislation. The existing ADU regulations prohibit ADU development on mixed-use zoned parcels and requires a minimum lot size requirement of 6,750 square feet. Amendments to State law allow ADUs on any parcel that allows a residential use, including mixed-use zones, regardless of lot size. An ADU may be established within an existing or proposed primary dwelling, conversion of an existing accessory structure, reconstruction of an existing structure proposed to be converted to an ADU, or construction of a new detached structure.

Perhaps the most significant change mandated by State law allows a parcel developed with a primary dwelling unit and an ADU to also establish a Junior Accessory Dwelling Unit (JADU) within the space of an existing primary dwelling unit, for a total of three (3) allowed units on a single property. A JADU, as defined in Government Code Section 65852.22, is a dwelling unit that is no more than 500 square feet in size and contained entirely within an existing or proposed single-family structure. A JADU shall include an efficiency kitchen, and may include separate sanitation facilities or shared sanitation facilities with the existing dwelling.

The proposed Ordinance includes provisions addressing each of these required changes to the City's existing development standards.

#### Size Limits & Setbacks

State legislation includes a "By-Right Provision" which allows the development of an attached or detached ADU with a maximum size of 850 square-feet for studio or one-bedroom units, or 1,000 square-feet for a unit with more than one bedroom, in any circumstance. ADUs permitted through this provision are subject to a maximum height of 16 feet, four-foot side and rear setbacks, and compliance with all building codes. No

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minimum lot size or lot coverage requirement shall apply to units permitted by this provision. The proposed ordinance acknowledges these By-Right Provisions consistent with State law.

In addition, the proposed Ordinance would amend the development standards for ADUs to limit the maximum size of attached ADUs to fifty percent (50%) of the total living area of the existing or proposed living area of the primary dwelling unit, whichever is less. While newly enacted State laws do not require cities to establish maximum size limitations for ADUs, any ordinance that does establish maximum sizes may not be less than the proposed limits included in the proposed ordinance. Under the proposed Ordinance, detached ADUs are limited to a maximum of 1,200 square feet. The maximum size limits proposed in the draft Ordinance meet the minimum sizes required by State law. This is a change from the existing regulations, which restrict the maximum size of both attached and detached ADUs to the lesser of:

- The maximum unit size allowed in the zone in which the ADU is proposed, which ranged from 850 square feet in the Single Family and Village Residential zones, to 1,200 square feet in all others, or
- Fifty percent (50%) of the primary unit.

ADUs proposed to exceed the sizes permitted by the By-Right Provision would remain subject to the setbacks, height limit, lot coverage, and floor-area ratio limitations of the zoning district in which they are located.

#### **Parking**

The City's existing ADU regulations require one parking space per ADU bedroom, with a maximum of two parking spaces per unit. Amendments to State legislation establish a maximum of one parking space per ADU. Parking spaces for ADUs do not need to be covered and may be located in the driveway or setbacks, a provision that remains the same. The proposed Ordinance establishes areas in the front yard where parking is prohibited and clarifies that ADU parking spaces must be on fully paved surfaces, consistent with AGMC Section 16.56.070. The existing ADU regulations do not require additional parking when an ADU meets any of the following five (5) exemptions:

1. If the accessory dwelling unit is located within one-half mile by travelled distance of an existing transit stop;
2. The accessory dwelling unit is located in the D-2.4 Historic Character Overlay District;
3. The accessory dwelling unit is located in a neighborhood where on-street parking permits are required but not offered to the occupant of the accessory dwelling unit;
4. A car share vehicle is located within one block of the accessory dwelling unit; or
5. The accessory dwelling unit is part of the existing primary residence or an existing accessory structure.

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Existing parking exemptions will remain applicable, and State law creates two additional exemptions, which are included in the proposed Ordinance:

1. Parking spaces are not required when an ADU is created within an existing or proposed primary structure.
2. Parking spaces for a primary dwelling are not required to be replaced when a garage, carport, or other covered parking structure is demolished or converted in conjunction with the construction of an ADU.

The proposed Ordinance retains a parking requirement for ADUs when applicable. However, given the existing ADU parking space exemptions in the State law, particularly the exemption for ADUs within a half mile of a bus stop, a significant portion of parcels within the City will not be required to provide parking spaces for ADUs. The existing ADU regulations also require parking spaces in a garage or carport to be replaced when converted to an ADU, but that is no longer allowed to be required under State law. As a result, a property that chooses to convert a garage to an ADU is not required to provide parking for either the primary dwelling unit or ADU.

#### Impact Fees

Building permits for both residential and non-residential projects are assessed impact fees to offset the costs associated with additional public facilities and infrastructure required for those new structures. Examples of impact fees include fire protection, police facilities, traffic signalization, park facilities, and water facilities. ADUs less than 750 square feet are exempt from impact fees pursuant to newly enacted State law. Units that exceed 750 square feet are assessed impact fees proportionately in relation to the square footage of the ADU to the square footage of the primary dwelling unit. For example, a 2,000 square foot primary dwelling with a proposed 1,000 square foot ADU would result in fifty percent (50%) of the impact fees imposed on the primary dwelling. The proposed Ordinance includes provisions addressing impact fees consistent with this newly enacted State law.

#### Tiny Homes on Wheels

The proposed Ordinance includes a new Development Code Section to allow Tiny Homes on Wheels (THOW) on all residentially zoned parcels in the City to help address housing supply shortages and affordability (Exhibit B of Attachment 1). THOW will be an alternative to permanent ADU structures and have been identified as a means to increase housing supply, choices, and affordability.

#### *Definition of THOW*

A THOW is considered a type of ADU, and more narrowly defined as a structure intended for separate, independent living quarters for one household that meets the following conditions:

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- 1) Is a detached self-contained unit, designed and built to look like a conventional building structure, and which includes basic functional areas that support normal daily routines such as cooking, sleeping, toilet and bathing facilities; and
- 2) Is licensed and registered with the California Department of Motor Vehicles; and
- 3) Meets the American National Standards Institute (ANSI) 119.5 requirements or the National Fire Protection Association (NFPA) 1192 standards, and is certified for ANSI or NFPA compliance. Certification must be made by a qualified third-party inspector; and
- 4) A pre-fabricated or manufactured THOW shall bear the California Insignia of Approval issued by the State Department of Housing and Community Development to demonstrate compliance with electrical, heat producing, plumbing, and fire and life safety systems and equipment; and
- 5) Is towable by a bumper hitch, frame-towing hitch, or fifth-wheel connection, cannot move under its own power and is no larger than allowed by California State Law for movement on public highways; and
- 6) Has a minimum of 100 square feet and maximum of 400 square feet as measured within the exterior faces of the exterior walls.

A recreational vehicle, camper, trailer, or manufactured home, as defined in Section 18010 of the California Health and Safety Code would not be viable as a THOW.

#### *Allowed Locations*

THOW are proposed to be allowed on any residential lot with an existing single family dwelling. Both a THOW and ADU would not be allowed on a single lot, as currently proposed. The proposed Ordinance would require the THOW to be located on the rear portion of a lot, setback at least four feet (4') from interior and rear property lines and ten feet (10') from a street side property line where applicable. Additionally, the proposed Ordinance requires a THOW to be parked on a surface paved with concrete, asphalt, or an equivalent paving material.

#### *Design Standards*

A THOW would be subject to design criteria to maintain the scale and character of the existing residential development. For example, the undercarriage of the THOW shall be hidden from view by the installation of a skirt around its perimeter. The Ordinance would also limit the height of the structure to one-story and require that mechanical equipment is integrated into the structure. A THOW would be required to connect to electric, water, and sewer utilities.

#### *Other Considerations*

A THOW would not be eligible for use as a short-term rental as currently proposed.

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#### **PLANNING COMMISSION:**

On August 3, 2021, the Planning Commission reviewed and commented on the proposed amendments to the ADU regulations as part of a study session (Attachment 2). The Commission was generally supportive of the changes and the inclusion of provisions to permit THOW. The Commission provided the following comments for staff to consider when revising the draft Ordinance:

- Modify architectural compatibility standards to be more permissive for pre-fabricated units as ADUs.
- Clarify the phrase “no feasible alternative” with regard to lots that cannot accommodate an ADU in the backyard.
- Consider design standards that allow for flexibility in designs that provide light and air for THOW.

On August 17, 2021, staff presented the draft Ordinance to the Commission with revisions responding to feedback provided at the study session (Attachment 3). The second draft of the Ordinance for the Commission’s review included changes to the architectural compatibility provisions for both ADUs and THOW, eliminated use of the phrase “no feasible alternative,” and included additional design standards for THOW. The draft Ordinance also clarified rental terms for ADUs based on guidance from the City Attorney.

The first draft of the Ordinance presented to the Planning Commission was inadvertently restrictive of permitting pre-fabricated or manufactured units as ADUs due to architectural compatibility standards. Those standards required ADUs to use the same colors and materials as the primary dwelling, which is not always feasible for pre-fabricated units. In response to the comments received from the Commission, staff clarified that the architectural compatibility standards requiring matching colors and materials is only required of ADUs either attached to the primary dwelling or created through the conversion of existing space. For example, if a garage were proposed to be converted to an ADU, the materials and colors used for the wall area replacing the removed garage door would be required to match the primary dwelling. Detached ADUs are encouraged to use similar materials and colors, but are not required to use the same materials so as to not discourage the use of pre-fabricated units as ADUs. The Planning Commission was supportive of this revision and it was carried forward in the proposed Ordinance for the Council’s consideration.

The first draft Ordinance included a provision that encouraged ADUs to be located in the backyard, and only allowed the construction of an ADU in the front yard where “no feasible alternative” exists. Staff removed the phrase “no feasible alternative” from this standard and revised it to encourage ADU construction behind the primary dwelling. Front yard setbacks requirements are still applicable to ADU development; however, front setbacks may not preclude the addition of a by-right ADU and must not unduly constrain the creation of all types of ADUs.

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In response to comments from the Commission and the public, staff has also revised the design standards for THOW. The Planning Commission recommended an increase to the amount of attached patio area allowed to be equal to the floor area of the THOW. Additionally, the Commission recommended that THOW have a minimum roof pitch of 1:12 to be more permissive of a variety of designs. Language was added in Section 16.52.250.C of the Ordinance that states that THOW “shall resemble the appearance of a traditional home.” Provisions for the addition of decks, patios, landings, and other similar features to THOW were also added to the ordinance. Staff proposed limiting the area of these features to twenty-five percent (25%) of floor area of the living area. Standards for minimum roof pitch were also modified to allow for designs that contain features that provide increased natural light and airflow for the comfort of the occupants and reduce the reliance on electricity for ventilation and lighting. The standard prohibiting slide-out extensions or pop outs was removed from the Ordinance to be more permissive of a variety of designs.

#### Short Term Rentals

Staff’s first proposed Ordinance presented to the Planning Commission on August 3<sup>rd</sup> included a provision prohibiting short term rentals (term of less than 30 days) for all ADUs created after the adoption of the Ordinance updates. The City Attorney has since clarified that State legislation only prohibits short term rentals of units created under the By-Right provisions. Nonetheless, in its motion to recommend adoption of the amendments, the Planning Commission included a recommendation that Council prohibit short term rentals in all ADUs created after the adoption of the Ordinance. The proposed Ordinance presented for introduction by Council includes a provision, Section G, consistent with the Planning Commission’s recommendation.

#### Housing Element Direction

The sixth cycle Housing Element prioritizes development of ADUs as a strategy to meet housing needs and the Regional Housing Needs Allocation assigned to the City. Housing Element Program A-2.1 calls for an update of the ADU provisions in the Development Code and for the City to publicize the ADU program to increase public awareness. During the Housing Element Update, staff received comments from both the Planning Commission and City Council about the desire to update the ADU regulations to encourage the creation of more ADUs. The Housing Element relies heavily on the creation of ADUs to meet the City’s Regional Housing Needs Allocation (RHNA). Specifically, it assumes that there is potential for the development of 236 ADUs, which equates to approximately thirty-four percent (34%) of the City’s total sixth cycle RHNA. The proposed Ordinance, in addition to information included on the City’s webpage, will allow the City to promote the creation of ADUs.

The SLO County ADU Task Force, a volunteer group promoting development of ADUs in the region, has also identified obstacles in the planning and permitting process that this



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update hopes to resolve. For example, the Ordinance will clarify requirements for maximum unit sizes, parking requirements, and utility connections. \

#### **Next Steps**

Introduction of the Ordinance is the first step towards enacting updates to the ADU regulations. Adoption of the ADU amendments is proposed to occur at the next Council meeting, scheduled for February 22, 2022, unless Council directs staff to make significant changes to the Ordinance. After adoption, staff will submit the Ordinance to the State Department of Housing and Community Development (HCD) for review. HCD will review the adopted Ordinance and notify the City if it complies with State ADU law. If the Ordinance is found to be out of compliance, HCD will provide findings detailing what changes are required to be compliant.

#### **ALTERNATIVES:**

The following alternatives are provided for the Council's consideration:

1. Introduce the attached Ordinance approving Development Code Amendment 20-001;
2. Modify as appropriate and introduce the attached Ordinance approving Development Code Amendment 20-001;
3. Do not introduce the Ordinance, and provide direction to staff on specific revisions to the Ordinance; or
4. Provide other direction to staff.

#### **ADVANTAGES:**

Amending the City's ADU regulations will bring them into compliance with State law, allow for a streamlined review process, and facilitate the development of new ADUs in the City consistent with the goals, policies, and programs identified in the City's Housing Element. Incorporating provisions to allow THOW will provide another option to increase housing production and housing options within the City.

#### **DISADVANTAGES:**

None identified.

#### **ENVIRONMENTAL REVIEW:**

In compliance with the California Environmental Quality Act (CEQA), the Community Development Department has determined that the project is statutorily exempt per Section 15282(h) of the Guidelines regarding projects involving the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city to implement provisions of Government Code Section 65852.2.

#### **PUBLIC NOTIFICATION AND COMMENTS:**

A notice of public hearing was published in the Tribune and posted at City Hall and on the City's website on January 28, 2022. The meeting Agenda was posted at City Hall and

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on the City's website in accordance with Government Code Section 54954.2. Notifications about the discussion were also sent to members of the public that have expressed interest in the ordinance update.

**Attachments:**

1. Proposed Ordinance
2. Staff Report and Minutes from the August 3, 2021 Planning Commission Meeting
3. Staff Report and Minutes from the August 17, 2021 Planning Commission Meeting