



## MEMORANDUM

**TO:** Planning Commission

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

**BY:** Andrew Perez, Planning Manager

**SUBJECT:** Consideration Of Amendments To Title 16 Of The Arroyo Grande Municipal Code (AGMC) Regarding Accessory Dwelling Units; Development Code Amendment 20-001; Location – Citywide

**DATE:** August 16, 2022

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### **SUMMARY OF ACTION:**

A recommendation to City Council to adopt amendments to the accessory dwelling unit ordinance and submit to the State Department of Housing and Community Development for review.

### **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:**

It is recommended that the Planning Commission adopt a Resolution recommending the City Council adopt amendments to the accessory dwelling unit ordinance (Attachment 1).

### **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, bringing local regulations consistent with 2017 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

## **Planning Commission**

Consideration Of Amendments To Title 16 Of The Arroyo Grande Municipal Code (AGMC) Regarding Accessory Dwelling Units; Development Code Amendment 20-001; Location – Citywide

**August 16, 2022**

**Page 2**

Newsom signed new state housing bills that further amended Government Code §65852.2 and §65852.22 related to regulations for development of ADUs. Therefore, Title 16 must be amended again for consistency with state law.

On consecutive meetings in August 2021, staff presented the draft Ordinance to the Planning Commission, which included provisions for both ADUs and Tiny Homes on Wheels (THOW). Staff modified the ordinance as suggested by the Planning Commission and introduced amendments to the ADU ordinance to Council on February 8, 2022 (Attachment 2). At that hearing, Council directed staff to revise the draft ordinance and conduct follow-up or additional research as follows:

- 1) Separate standards for THOW from the ADU ordinance;
- 2) Develop objective design standards to ensure detached ADUs resemble the primary unit;
- 3) Add a prohibition of rooftop decks for detached ADUs;
- 4) Evaluate the feasibility of a fee waiver program;
- 5) Explore a pre-fabricated ADU program;
- 6) Modify the allowed locations to prohibit ADUs in the front yard; and
- 7) Develop incentives for installation of solar panels on ADUs.

### **ANALYSIS OF ISSUES:**

At a study session with City Council on July 26, 2022 staff presented revisions to the ordinance in response to the comments from the February 8, 2022 Council meeting (Attachment 3).

#### **1. Tiny Homes on Wheels (THOW)**

All development standards for THOW have been removed from consideration and will be presented for further consideration by the City Council at a future meeting. Council directed staff to return for a study session in the near future, but the date of that meeting has not yet been determined.

#### **2. Objective Design Standards**

State law allows agencies to develop objective design and development standards for ADUs that include, but are not limited to, parking, height, setbacks, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards must be sufficiently objective to allow ministerial review of an ADU. Objective standards are those that involve no personal or subjective judgment by a public official and are uniformly verifiable.

During its discussion of the ADU ordinance on February 8, 2022, Council directed staff to develop objective design standards to make ADUs compatible with existing residential

## **Planning Commission**

Consideration Of Amendments To Title 16 Of The Arroyo Grande Municipal Code (AGMC) Regarding Accessory Dwelling Units; Development Code Amendment 20-001; Location – Citywide

**August 16, 2022**

**Page 3**

development on the property on which they are constructed. These standards require design considerations for new detached ADUs such as matching colors to the primary dwelling and requiring all ADUs to adhere to these standards if located in the front yard. Garage conversions to ADUs require that the garage door opening shall be replaced with exterior wall coverings, or residential windows and doors, to match the existing exterior garage wall covering and detailing. While objective design standards are proposed in the draft ordinance, certain “By-Right” ADUs may not be subject to design standards. For example, an agency cannot apply design and development standards to ADUs created under subdivision (e) of Government Code 65852.2. This section regulates ADUs created through:

- Conversion of space within an existing single-family dwelling, new construction ADUs;
- New construction ADU that does not exceed four-foot side and rear setbacks and a height limitation of 16 feet;
- Conversion of existing non-habitable space within multifamily structures; and
- Construction of up to two detached ADUs on lots developed with existing multifamily dwellings, subject to four-foot side and rear setbacks, and a 16-foot height limit.

Additionally, the regional pre-approved ADU plan program will provide ADU plans of six different sizes ranging from approximately 300-1,200 square feet, and four different architectural themes. Due to the regional nature of the program, not all of the architectural styles may be compatible with every homeowner’s existing residence. Imposing design standards that require the same cladding and colors as the primary unit is likely to discourage use of the pre-approved plans, which are intended to provide property owners an avenue to construct an ADU with reduced costs associated with planning and design. For example, the predominant siding material for each of the architectural styles in the draft pre-approved ADU plans are either horizontal or vertical siding, whereas stucco is the predominant siding material for most residential buildings in the City. Council also encouraged pre-fabricated units as another option for property owner to add an ADU at reduced costs. While these units are a viable option for ADU creation, they are less customizable than a traditionally built unit. The nature of pre-fabricated units makes them less likely to be compatible with an existing primary unit and make compliance with the proposed objective design standards difficult and impractical. Therefore, although their application will be limited somewhat, staff recommends that objective design standards be included in the Ordinance for those ADUs that are not “By-Right” and for ADUs proposed in the front yard (see discussion on ADUs in front yards below).

Additionally, staff recommends that the objective design standards apply to new ADUs within the historic Village overlay district. The Design Guidelines and Standards for the

## **Planning Commission**

Consideration Of Amendments To Title 16 Of The Arroyo Grande Municipal Code (AGMC) Regarding Accessory Dwelling Units; Development Code Amendment 20-001; Location – Citywide

**August 16, 2022**

**Page 4**

Historic Character Overlay District (D-2.4) also contain a number of standards that are objective in nature, which staff has included in the draft ordinance, as follows:

### Building Design:

- Second floor living area shall be setback 5 feet from ground floor footprint.

### Construction Materials:

- Window sashes and doorframes shall be made of wood or vinyl that looks like wood. Unfinished aluminum is not allowed.
- New or replacement doors shall be wood or an approved substitute material that simulates the appearance of original materials.

### Colors:

- The use of fluorescent “neon”, “day-glo”, or bright primary colors as the predominant shade on building facades is not permitted.

### 3. Prohibition of Rooftop Decks

A prohibition of rooftop decks on detached ADUs is now included in Section D of the draft Ordinance.

### 4. Fee Waiver Program

Council also directed staff to consider a program that would waive all fees associated with permitting and construction of ADUs proposed to be less than 500 square feet, to further encourage and incentivize creation of units that will be affordable for low-income households. Council supported staff’s proposal for a fee waiver program that would waive permit processing fees for ADUs in exchange for an agreement that the unit will be rented to lower income households for a period of 10 years. The affordability restriction would be recorded against the title of the property, and monitored by staff annually to ensure compliance. The use of a deed restriction as a mechanism to ensure affordability is similar to the process by which affordable units established through conditions of approval for larger housing developments are managed. This program is not codified, but rather implemented through a policy adopted by Council.

The program will transfer money from the Inclusionary Affordable Housing Trust Fund (Trust Fund) to recoup the loss of revenue associated with waiving fees for plan review, inspections, and utility connection fees, if otherwise applicable to the new units. Pursuant to Arroyo Grande Municipal Code Section 16.80, the sole purpose of Trust Fund is to increase the supply of affordable housing units. The Trust Fund is administered under the supervision of the Community Development Director and funds may be used to offset the costs of producing affordable units, including permitting costs. Providing financial assistance for the creation of affordable units is consistent with Housing Element programs A.3-1, A.3-2, A.3.3, and C.1-1 related to the development of affordable housing. Offsetting revenue losses created by a fee waiver program with funding from Trust Fund will enable the City, in certain situations like this where there is a clear nexus to affordable

## **Planning Commission**

Consideration Of Amendments To Title 16 Of The Arroyo Grande Municipal Code (AGMC) Regarding Accessory Dwelling Units; Development Code Amendment 20-001; Location – Citywide

**August 16, 2022**

**Page 5**

housing, to provide financial assistance for new low-income housing without impacting other City services or permit applicants. Council discussed the potential implications to the Trust Fund as a result of this program. Council directed staff to provide an annual report of the status of the program as it relates to the Trust Fund, rather than establishing a limit to the funding that would be dedicated to this program.

### 5. Pre-fabricated ADU Program

Council also directed staff to amend the ordinance to allow pre-fabricated units to serve as ADUs. The draft ordinance now specifically identifies that factory-built housing (FBH) is allowed as a type of ADU. The State Department of Housing and Community Development (HCD) defines FBH as “residential structures manufactured wholly or partially offsite, in sections, or in building components which are assembled at the installation site to form part of or most of a completed unit.” Laws and regulations require the manufacturer to obtain the services of HCD-approved third-party design approval and inspection approval entities, and to document methods of quality control. Compliance with the rules and regulations for FBH is demonstrated through the placement of an HCD “Insignia of Approval” on each unit. State law establishes that the permitting jurisdiction must verify the presence of the HCD Insignia of Approval and inspect the installation of the unit when FBH is proposed. The Building Official may not require review of any FBH plans, require alterations to an approved FBH, or charge plan check fees when plans have already been approved by HCD or an HCD-approved third party reviewer. Allowing FBH as ADUs could accelerate ADU development due to reduced plan review time and costs.

### 6. Restriction on Front Yard ADUs

Under current State law, an agency may apply front yard setbacks for ADUs, but front yard setbacks cannot preclude a by-right ADU and must not unduly constrain the creation of all types of ADUs. Therefore, an outright prohibition of ADUs in the front setback is not proposed in the attached draft Ordinance. However, Section D of the draft ordinance clarifies that ADUs shall only be permitted in the front yard if no feasible alternative exists. The proposed Ordinance further explains that feasibility is determined as whether a By-Right ADU, as described in Section D of the draft ordinance, can physically be constructed behind the primary dwelling. If a by-right ADU can be constructed behind the primary dwelling, the ADU cannot be located in the front yard setback. Due to the potential for ADUs in the front yard setback to be more visually prominent, the draft ordinance also clarifies in Section D that these ADUs will be subject to the Objective Design Standards.

### 7. Research Regarding Incentives for Solar Installations

Newly constructed ADUs are subject to the Energy Code, which requires newly constructed, non-manufactured, detached ADUs to install solar panels. The California Energy Commission ruled that solar panels can be installed on the ADU or on the primary dwelling unit to satisfy this requirement. ADUs established through the conversion of

## **Planning Commission**

Consideration Of Amendments To Title 16 Of The Arroyo Grande Municipal Code (AGMC) Regarding Accessory Dwelling Units; Development Code Amendment 20-001; Location – Citywide

**August 16, 2022**

**Page 6**

existing space, whether attached or detached from the primary dwelling unit, or as an addition to an existing dwelling unit, are not subject to the Energy Code requirement to provide solar panels. Construction documents being developed for the regional pre-approved ADU program will include the option to include solar panels. Federal tax credits are available for solar installations as one incentive that already exists. Since solar panels are already required, the proposed Ordinance does not include additional provisions relating to solar installations in light of these existing regulations.

### Next Steps

A recommendation from the Planning Commission will allow for an introduction of the draft ordinance to Council at the September 13, 2022 meeting and adoption at the following meeting. Regulations for THOW will return to Council at a separate study session before returning to Planning Commission for a recommendation hearing.

### **ALTERNATIVES:**

The following alternatives are provided for the Planning Commission's consideration:

1. Adopt a Resolution recommending that Council adopt the amendments to the ADU Ordinance; or
2. Modify and adopt a Resolution recommending that Council adopt the amendments to the ADU Ordinance; or
3. Provide other direction to staff.

### **ADVANTAGES:**

Amendments to the Ordinance are in compliance with State law and address specific concerns expressed by Council. Updating the ADU ordinance and implementing a fee waiver program will accomplish Housing Element Programs A.2-1 and A.3-3, respectively.

### **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 CEQA Guidelines regarding projects involving the adoption of an ordinance regarding second units in a single-family or multi-family residential zone by a city to implement Government Code Section 65852.2.

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

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

## **Planning Commission**

Consideration Of Amendments To Title 16 Of The Arroyo Grande Municipal Code (AGMC) Regarding Accessory Dwelling Units; Development Code Amendment 20-001; Location – Citywide

**August 16, 2022**

**Page 7**

### Attachments:

1. Resolution
2. Minutes from the February 8, 2022 City Council meeting
3. Minutes from the July 26, 2022 City Council meeting