

MEMORANDUM

TO: City Council

FROM: Timothy J. Carmel, City Attorney

SUBJECT: Supplemental Information
9.a. - September 13, 2022 City Council Meeting
Discuss and Consider Introduction of an Ordinance Amending Title 16 of the Arroyo Grande Municipal Code (AGMC) Regarding Accessory Dwelling Units; Development Code Amendment 20-001 and Consideration of a Fee Waiver Program for Certain Accessory Dwelling Units

DATE: September 12, 2022

The staff report for the above-referenced item includes a potential ADU Fee Waiver Program beginning on page 9. It includes a discussion related to the applicability of prevailing wages under California Labor Code Section 1720, as a result of a provision in subsection (b)(4) that provides that a public works project is defined to include any construction project “paid for all or in part out of public funds” which includes when “fees...are paid, reduced, charged at less than fair market value, waived, or forgiven” by the City.

Council Member Paulding has brought to our attention another subsection, Labor Code Section 1720(c)(1), which provides an exemption for most private residential projects built on private property. I believe that Council Member Paulding is correct and that the fee waiver program would be exempt from prevailing wages.

In reviewing this issue, we had found the attached Accessory Dwelling Units Fee Waiver Information and Application from the City of Santa Cruz, which indicates that prevailing wages were required by its ADU fee waiver program and includes a California Prevailing Wage Certification form. This was also echoed in a 2019 Western City article about ADUs, which can be downloaded at the following URL:

<https://www.westerncity.com/article/accessory-dwelling-units-help-increase-housing-supply>.

We have contacted the Santa Cruz City Attorney to follow up and request clarification regarding the prevailing wage issue and how their office came to the conclusion that they apply. We will also contact the Department of Industrial Relations, since they are the final word on the issue of payment of prevailing wages. Our office will continue to look into the issue and will update the City Council at the next meeting, at which time we will provide direction regarding the application of prevailing wages. I apologize for any confusion.

Attachment: City of Santa Cruz Accessory Dwelling Units Fee Waiver Information and Application

cc: City Manager
City Clerk
City Website or Public Review Binder



ECONOMIC DEVELOPMENT
HOUSING AND COMMUNITY DEVELOPMENT DIVISION

337 LOCUST STREET, SANTA CRUZ, CA 95060 • 831-420-5150 • www.cityofsantacruz.com

**2019
ACCESSORY DWELLING UNITS
FEE WAIVER INFORMATION and APPLICATION**

Various types of City permit fees (see Exhibit “A” attached) may be waived in exchange for a property owner’s agreement to restrict a new accessory dwelling unit (“ADU”) for rent to a low or very-low income household. More fees are waived in exchange for an agreement to rent to very-low income households as opposed to low income households. ***Estimated*** 2019 fees for a 500 sq.ft. ADU are approximately \$14,464 (see Exhibit “B” attached). Please note that the list of fees may not be all inclusive. Check with the Building and Safety Division for a specific list of fees that apply to your project.

Prior to receiving a building permit, all ADU owners are required to execute and record an “Accessory Dwelling Unit Affordable Housing Declaration of Covenants and Land Use Restrictions - Fee Waivers”. This document regulates the establishment, use and occupancy of the ADU, establishes the maximum allowable income of the tenant household, and the maximum rents that may be charged, based upon the level of affordability (see Exhibit “C” and “D” attached for 2019 levels). These restrictions are recorded against the property in perpetuity. Owners submit an annual compliance report to the City certifying the tenant household’s income and the rents charged.

Owners wishing to remove the restrictions in the future must pay any previously waived fees.

In order to obtain fee waivers, owners must submit a Fee Waiver Application (attached).

Please note the following:

Under California Labor Code Section 1720(a) prevailing wage requirements apply to any public works project, defined to include any construction project “paid for all or in part out of public funds”. Per Section 1720(b)(4) a construction project is paid for in part out of public funds when “fees...are paid, reduced, charged at less than fair market value, waived, or forgiven” by the City.

Accordingly, recipients of ADU fee waivers must require their contractors and sub-contractors to pay state prevailing wage rates to their employees. Fee waiver recipients are required to certify their compliance with this requirement.

For additional information, please contact the City’s Housing and Community Development Division at 831-420-5150.

EXHIBIT "A"
TYPES OF PERMIT FEES WAIVED

Santa Cruz Municipal Code Section 24.16.300

Only units designated as very-low or low income are eligible for fee waivers. The following list may not include all fees specific to individual projects.

FEE TYPE	VERY-LOW INCOME (0% - 50% of median income)	LOW INCOME (51%-60% of median income)
Planning Application Fee (Only if project is 100% affordable)	X	X
Planning Plan Check Fee (Only if project is 100% affordable)	X	X
Building Permit Fee	X	
Building Plan Check Fee	X	
Parks Fee	X	
Water Connection Fee	X	X
Sewer Connection Fee	X	X
Fire Fee Application & Plan Check	X	
Parking Deficiency Fee (Only if located in the Downtown Parking District)	X	

EXHIBIT "B"
ESTIMATED 2019 ADU FEES

(Fees are approximate only and may vary for individual projects. Check with the Building and Safety Division for a list of fees specific to your project.)

FEE TYPE	AMOUNT
Planning Plan Check Fee	\$600.00
Building Permit Fees	\$3,275.00
Building Plan Check Fee	\$650.00
Parks Fee	\$1,500.00
Water System Development Charge	\$7,279.00
Sewer Connection Fee	\$900.00
Fire Fee	\$260.00
Total:	\$14,464.00

EXHIBIT “C”

**2019
MAXIMUM ALLOWABLE VERY-LOW INCOME (50% AMI) BY HOUSEHOLD SIZE
AND
MAXIMUM ALLOWABLE RENTS BY UNIT SIZE
ACCESSORY DWELLING UNITS
PER RESOLUTION NO. NS-22,856**

BASED ON HCD INCOME LIMITS EFFECTIVE MAY 6, 2019¹

<u>VERY LOW INCOME HOUSEHOLDS</u>			
Household/ Unit Size	1 Person/ Studio	2 Person/ 1-bedroom	3 Person/ 2 -bedroom
STEP 1: Very-Low Income Maximum Allowable Household Income	\$42,950	\$49,100	\$55,250
STEP 2: Maximum Allowable Rent (if Owner Pays all Utilities)	\$1,074	\$1,228	\$1,381

1. California Department of Housing and Community Development (HCD limits) effective May 6, 2019.
2. In accordance with the following, household assets must be considered when determining a household's income:
 - a. If total household assets do not exceed the maximum allowable income shown above; no assets shall be counted.
 - b. If total household assets exceed the maximum allowable income shown, the value of those assets shall be calculated in accordance with the formula utilized by the Housing Authority of the County of Santa Cruz for the Section 8 Housing Choice Voucher Program (0.44% of the net value of the assets or the actual earned income from the asset, whichever is greater) and shall be added to the household's actual gross annual income; that total shall be less than the maximum allowable income shown above.
 - c. For households consisting of at least one person over 62 years of age, the first \$60,000 of assets shall be excluded from calculations under 2a and 2b above.
3. The gross annual income of a household (all household members) may not exceed the maximum allowable income shown above by respective household size.
4. Table assumes landlord pays utilities and shows maximum allowable rent, which includes utilities. Utility costs are established by the Housing Authority of the County of Santa Cruz in conjunction with the Section 8 Rent Subsidy Program. If tenant pays utilities, a utility allowance must be deducted from the maximum allowable rent.

EXHIBIT “D”

**2019
MAXIMUM ALLOWABLE LOW INCOME (60%AMI) BY HOUSEHOLD SIZE
AND
MAXIMUM ALLOWABLE RENTS BY UNIT SIZE
ACCESSORY DWELLING UNITS
PER RESOLUTION NO. NS-22,856**

BASED ON HCD INCOME LIMITS EFFECTIVE MAY 6, 2019¹

<u>LOW INCOME HOUSEHOLDS</u>			
Household/ Unit Size	1 Person/ Studio	2 Person/ 1-bedroom	3 Person/ 2 -bedroom
STEP 1: Maximum Allowable Household Income 60% AMI	\$41,160	\$47,040	\$52,920
STEP 2: Maximum Allowable Rent (if Owner Pays all Utilities)	\$1,029	\$1,176	\$1,323

1. California Department of Housing and Community Development (HCD limits) effective May 6, 2019.
2. In accordance with the following, household assets must be considered when determining a household's income:
 - a. If total household assets do not exceed the maximum allowable income shown above; no assets shall be counted.
 - b. If total household assets exceed the maximum allowable income shown, the value of those assets shall be calculated in accordance with formula utilized by the Housing Authority of the County of Santa Cruz for the Section 8 Housing Choice Voucher Program (.44% of the net value of the assets or the actual earned income from the asset, whichever is greater) and shall be added to the household's actual gross annual income; that total shall be less than the maximum allowable income shown above.
 - c. For households consisting of at least one person over 62 years of age, the first \$60,000 of assets shall be excluded from calculations under 2a and 2b above.
3. The gross annual income of a household (all household members) may not exceed the maximum allowable income shown above by respective household size.
4. Table assumes landlord pays utilities and shows maximum allowable rent, which includes utilities. Utility costs are established by the Housing Authority of the County of Santa Cruz in conjunction with the Section 8 Rent Subsidy Program. If tenant pays utilities, a utility allowance must be deducted from the maximum allowable rent.



(complete and return to 337 Locust St., Santa Cruz, CA 95060
Attn: Housing and Community Development Division)

Income level ADU will be restricted to: *(check one)*

☐ Very-low (50% of median income)

☐ Low (60% of median income)

- ☐ Legal Description of Property *(may be obtained from a title report, deed of trust or a title company)*
- ☐ Proof of Homeowner's Property Tax Exemption *(may be obtained from the Santa Cruz County Assessor's office)*
- ☐ Grant Deed - must identify **all** owners of the property *(may be obtained from the Santa Cruz County Recorder's office or title company)*
- ☐ California State Prevailing Wage Certification *(signed and dated by property owner)*

Date _____

**California State Prevailing Wage Certification
Accessory Dwelling Unit**

Fee Waiver Recipient Name: _____

Project Address: _____

Building Permit No: _____

1. Under California Labor Code Section 1720(a) prevailing wage requirements apply to any public works project. Public works projects are defined as any construction project "paid for all or in part out of public funds" and costing \$25,000 or more.
2. Per Section 1720(b)(4) a construction project is paid for in part out of public funds when "fees...are paid, reduced, charged at less than fair market value, waived, or forgiven" by the City.
3. Accordingly, accessory dwelling unit ("ADU") fee waiver recipients must require their contractors and sub-contractors to pay state prevailing wage rates to their employees on ADU projects costing \$25,000 or more.
4. State prevailing wage rates are published by the State of California Department of Labor Relations ("DIR") at <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>.
5. Fee waiver recipients may only hire contractors and subcontractors registered with the State of California Department of Industrial Relations at <https://efiling.dir.ca.gov/PWCR/Search>.
6. Upon awarding a contract for the construction of an ADU to a DIR-registered contractor, the fee waiver recipient must register their ADU project with the DIR at <https://www.dir.ca.gov/pwc100ext/>.
7. Upon project completion, fee waiver recipients must send a notice of completion to the DIR at dircmu@dir.ca.gov.
8. Fee waiver recipients must provide the City of Santa Cruz with proof of compliance with the above prior to or concurrently with obtaining the final building permit inspection.

The undersigned understands the above information and agrees to comply with the requirements stated therein. The undersigned further understands that failure to comply with the above requirements may result in the revocation of the City's permission to maintain an ADU on the fee waiver recipient's property. Alternatively, the City may require that any fees waived be reimbursed to the City with accrued interest at the legal rate, and shall report the recipient to the California Department of Industrial Relations for failure to comply with the above-cited Labor Code provisions.

Fee Waiver Recipient

Date