



MEMORANDUM

TO: City Council

FROM: Brian Pedrotti, Community Development Director

BY: Andrew Perez, Planning Manager

SUBJECT: 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 13, 2022

SUMMARY OF ACTION:

Introduction of the proposed Ordinance to amend Title 16 of the Arroyo Grande Municipal Code regarding accessory dwelling units (Attachment 1) will allow for adoption at a future City Council meeting and submittal to the State for final review consistent with applicable legislation. In addition, direction is requested by staff regarding a possible fee waiver program for certain accessory dwelling units.

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 Accessory Dwelling Unit (ADU) regulations, including staffing hours, website development, and marketing materials.

RECOMMENDATION:

Introduce the Ordinance amending the regulations for accessory dwelling units and provide feedback about the details of the proposed fee waiver program.

BACKGROUND:

The California 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.

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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 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.

The process to update the Ordinance began with a study session at the August 3, 2021 Planning Commission (PC) meeting. At the following PC meeting, staff presented amendments to the Ordinance developed in accordance with feedback obtained from the study session, and the PC recommended that Council adopt the proposed Ordinance. The Ordinance amendments were introduced to Council at its meeting on February 8, 2022. Council directed staff to modify the draft Ordinance with regard to several aspects of the Ordinance. Staff modified the Ordinance accordingly and presented the changes to Council at a study session on July 26, 2022. Positive feedback from Council at the study session allowed staff to proceed to a recommendation hearing with the PC on August 16, 2022, at which PC recommended Council adopt the Ordinance amendments.

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, how each is implemented, and the current proposal to address each amendment in Arroyo Grande.

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">• Allows ADUs up to 850 square feet or 1,000 square feet on any residential or mixed-use lot.• Prohibits owner-occupancy requirement.• Requires ministerial approval within 60 days of application.• Prohibits impact fees on ADUs under 750 square feet.• Prohibits minimum lot size requirements for ADUs.• Reduces parking requirements.	Amendments proposed to Title 16 to comply.

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		• Allows one ADU plus one junior ADU.	
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.
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 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 City's existing ADU regulations prohibit ADU development on mixed-use zoned parcels and require a minimum lot size 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.

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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 minimum lot size or lot coverage requirement shall apply to units permitted by this provision. Section C of the proposed Ordinance establishes regulations for By-Right ADUs, consistent with State law.

In addition, the proposed Ordinance would amend the development standards for ADUs to limit the maximum size of new 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. An attached ADU created through the conversion of existing space is not subject to a maximum unit size. Expansion of an existing structure proposed to be converted to an ADU is limited to 150 square feet, but only for purposes of accommodating means of ingress and egress. 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. Under the City’s current ADU regulations, parking spaces for ADUs do not need to be covered and may be located in the driveway or setbacks, and these provisions are proposed to remain 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

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16.56.070. The existing ADU regulations do not require additional parking when an ADU meets any of the following five (5) exemptions consistent with State law:

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.

These 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 ADU parking space exemptions established prior to the legislative updates to the State law in 2019, 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 City's 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 under the proposed Ordinance.

Impact Fees and Utilities

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

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Ordinance includes provisions addressing impact fees consistent with this newly enacted State law.

State law prevents the City from imposing fees or capacity charges for ADUs or JADUs created through the conversion of space within an existing single-family dwelling or accessory structure. When new, separate utility connections are proposed, the connection fees and connection charges must be proportionate to the burden of the proposed ADU based on either its square footage or plumbing fixtures as compared to the primary dwelling.

Additional Revisions Directed by Council

In addition to the changes that were made in response to changes in State law, Council directed staff to modify the Ordinance in certain respects to help achieve the City's housing goals and maintain community character. Staff introduced amendments to the ADU Ordinance to Council on February 8, 2022 (Attachment 2), and at that hearing, Council directed staff to revise the draft Ordinance and conduct follow-up or additional research as follows:

1. Separate standards for tiny homes on wheels (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.

Previous versions of the proposed Ordinance included standards for THOW, which have now been removed from the current proposed Ordinance. A provision prohibiting rooftop decks has also been added to the current edition. Staff was unable to identify any new incentives for homeowners to include solar panels on ADUs, and so the revised Ordinance does not include new provisions addressing this item. Revisions to address the other four discussion items are explained in more detail in the paragraphs below.

An amended draft Ordinance was presented to Council at a study session on July 26, 2022 (Attachment 3), and, after receiving supportive feedback, the revised Ordinance was presented to the Planning Commission on August 16, 2022, at a recommendation hearing (Attachment 4). The Planning Commission was supportive of each of staff's responses to the seven items previously mentioned, and adopted a Resolution recommending Council adopt the amendments to the Ordinance.

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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 development on the property on which they are constructed. The revised Ordinance presented to Council on July 26, 2022, and recommended by the Planning Commission for adoption (Attachment 1), contains proposed objective design standards. 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.

Although the proposed Ordinance includes objective design standards, it also limits the application of these standards to the following ADUs:

- Non-“By-Right” ADUs
- ADUs constructed within a front yard (see discussion on ADUs in front yards below)
- ADUs proposed within the Historic Village Overlay District
- ADUs that do not utilize a pre-approved ADU plan developed through the regional pre-approved ADU plan program
- ADUs that are not pre-fabricated

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 of up to 800 square feet 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

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- 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 owners 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.

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 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.

Pre-fabricated ADUs

Council also directed staff to revise the proposed 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

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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. The proposed Ordinance includes provisions addressing these requirements of a FBH to qualify as a permitted ADU. Allowing FBH as ADUs could accelerate ADU development due to reduced plan review time and costs. As mentioned above, a FBH ADU would not be subject to the objective design standards developed for the Ordinance.

Restriction on Front Yard ADUs

Under current State law, an agency may apply front yard setbacks for ADUs, but front yard setback requirement cannot 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 provides 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.

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. Although it is not codified in the Ordinance, the Program would waive permit processing fees for ADUs that are 500 square feet or less in exchange for an agreement that the unit will be rented to lower income households for a period of 10 years. The affordability restriction will 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. A draft resolution

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describing the parameters of the program is included as Attachment 6 to this report. The resolution is provided to obtain feedback from Council, with the intent to adopt the resolution at its next meeting on September 27, 2022.

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 such fees are otherwise applicable to the new units. Pursuant to Arroyo Grande Municipal Code Section 16.80, the sole purpose of the 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 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 on July 26, 2022, and 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. The direction to provide an annual report to Council on the status of the program is included in the draft resolution. Other aspects of the program, such as procedures for establishing rental limits and income limits for renters will be specified in the individual affordable housing agreements created for each individual property.

It is important to note that under California Labor Code Section 1720(a), prevailing wage requirements apply to any public works project, which is defined to include any construction project “paid for all or in part out of public funds.” Per Labor Code 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 for ADUs costing over \$25,000 or more. This requirement will certainly affect the economic benefits of the fee waiver program and discourage some from participating.

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

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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 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 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 and the resolution to implement the fee waiver program are proposed to occur at the next Council meeting, scheduled for September 27, 2022, unless Council directs staff to make significant changes to either. 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.

DISADVANTAGES:

None identified.

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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 September 2, 2022. The meeting Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

Attachments:

1. Proposed Ordinance
2. Staff Report and Minutes from the February 8, 2022 City Council Meeting
3. Staff Report and Minutes from the July 26, 2022 City Council Meeting
4. Staff Report and Minutes from the August 16, 2022 Planning Commission Meeting
5. Planning Commission Resolution 22-2269
6. Fee Waiver Program - Draft Resolution