



Staff Liaison
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AGENDA

REGULAR MEETING OF THE PLANNING COMMISSION

September 15, 2021 at 7:30 p.m.

VIA TELECONFERENCE

<https://us06web.zoom.us/j/81129823464?pwd=OFNrbEdmZ1A\Mjdma1NEMEI5bW1lQT09>

Meeting ID: 811 2982 3464

Passcode: 318665

Or Join by Phone: 408-638-0968

7:30 p.m. CONVENE REGULAR MEETING

1. **ROLL CALL** – Chair Daniel Hamilton, Vice Chair Leslie Mendez; Members Brendan Bloom, Greg Crump, Erin Gillett, Linda Klein and Joy Navarrete
2. **COUNCIL/STAFF LIAISON ANNOUNCEMENTS AND REPORTS**
The City Council Liaison or City staff may report on matters of general interest to the Planning Commission, Council policies, priorities and significant actions taken by the City Council.
3. **ORAL COMMUNICATIONS FROM THE PUBLIC**
Remarks are typically limited to three minutes per person, and may be on anything within the subject matter jurisdiction of the body. Remarks on non-agenda items will be heard first, remarks on agenda items will be heard at the time the item is discussed.
4. **ADOPTION OF MINUTES**
Approval of the August 18, 2021 meeting minutes.
5. **COMMISSIONER COMMUNICATION/CONFLICT OF INTEREST DISCLOSURE**
This time on the agenda is reserved for Commissioners to disclose communications from individuals regarding specific agenda items or to state a potential conflict of interest in relation to a specific agenda item
6. **PUBLIC HEARING: ACCESSORY DWELLING UNIT ORDINANCE**
Applicant: City of El Cerrito
Location: City Wide
Request: Planning Commission recommendation to City Council on a Zoning Text Amendment for Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) regulations.
CEQA: Pursuant to CEQA Guidelines Section 15282(h), the adoption of an ordinance regarding accessory dwelling units in a single-family or multifamily residential zone by a city to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code is statutorily exempt from the requirements of CEQA.
7. **STAFF COMMUNICATIONS**
Informational reports on matters of general interest, presented by City staff.

8. ADJOURNMENT

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact Sean Moss at (510) 215-4330. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I).

Any writings or documents provided to a majority of the members regarding any item on this agenda will be made available for public inspection.



MINUTES

REGULAR MEETING OF THE PLANNING COMMISSION

August 18, 2021 at 7:30 p.m.

This meeting was held via teleconference.

Staff Liaison

Sean Moss | 510.215.4330
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7:30 p.m. CONVENE REGULAR MEETING

1. **ROLL CALL** – Chair Daniel Hamilton; Members Erin Gillett, Leslie Mendez, Greg Crump, and Joy Navarrete. Commissioners Brendan Bloom and Linda Klein had excused absences.
2. **COUNCIL/STAFF LIAISON ANNOUNCEMENTS AND REPORTS**
3. **ORAL COMMUNICATIONS FROM THE PUBLIC**
4. **ADOPTION OF MINUTES**
Moved/Second: Commissioners Mendez/Gillet. **Action:** Passed a motion to adopt the July 21, 2021 meeting minutes. **Ayes:** Commissioners Gillett, Hamilton, Navarrete, Mendez. **Abstain:** Commissioner Crump. **Absent:** Commissioners Klein and Bloom.
5. **COMMISSIONER COMMUNICATION/CONFLICT OF INTEREST DISCLOSURE**
Nothing was reported
6. **PUBLIC HEARING: 1910 KEY BOULEVARD – CONDITIONAL USE PERMIT**
Application: PL21-0166
Applicant: Tenzin Shrestha
Location: 1910 Key Boulevard
APN: 502-051-007
Zoning: RS-5 (Single Family Residential)
General Plan: Low Density Residential
Request: Planning Commission consideration of a proposed 23 sq. ft. addition to a Duplex (Two-Family Dwelling) that requires a Conditional Use Permit for expanding a legally nonconforming Duplex use in the RS-5 zoning district. (Chapter 19.27 and Chapter 19.34, ECMC).
CEQA: This project is categorically exempt from the provisions of CEQA pursuant to Section 15301 of the CEQA Guidelines, Class 1: Existing Facilities.

Assistant Planner Diego Romero presented the staff report and answered questions from the Commission.

The public hearing was opened.

No speakers addressed the Commission.

The public hearing was closed.

Moved/Second: Commissioner Crump/Mendez. **Action:** Passed a motion to adopt a resolution granting a Conditional Use Permit to allow a proposed 23 sq. ft. addition to a Duplex (Two-Family Dwelling) which expands a legally nonconforming Duplex use in the RS-5 zoning district.

Ayes: Commissioners Gillett, Hamilton, Mendez, Navarette, Crump.

Noes: None.

Abstain: None.

Absent: Commissioners Klein and Bloom.

7. PUBLIC HEARING: 6818 CUTTING BOULEVARD – CONDITIONAL USE PERMIT

Application: PL21-0171

Applicant: Patricia Guevara

Location: 6818 Cutting Boulevard

APN: 501-470-002

Zoning: RS-5 (Single Family Residential)

General Plan: Low Density Residential

Request: Planning Commission consideration of a proposed basement conversion resulting in a four-bedroom single-family house that requires a Conditional Use Permit for enlarging a house considered legally nonconforming because it contains one covered parking space and would result in more than 3 bedrooms (Chapter 19.27 and Chapter 19.34, ECMC).

CEQA: This project is categorically exempt from the provisions of CEQA pursuant to Section 15301 of the CEQA Guidelines, Class 1: Existing Facilities.

Assistant Planner Diego Romero presented the staff report and answered questions from the Commission.

The public hearing was opened.

The following speakers addressed the Commission:

Ken Alborn

Cordell Hindler

The public hearing was closed.

Moved/Second: Commissioner Navarette/Crump. **Action:** Passed a motion to adopt a resolution granting a Conditional Use Permit to allow basement conversion resulting in a four-bedroom single-family house which enlarges a house considered legally nonconforming because it contains one covered parking space and would result in more than 3 bedrooms.

Ayes: Commissioners Gillett, Hamilton, Klein, Mendez, Navarette, Bloom, Crump.

Noes: None.

Abstain: None.

Absent: Commissioners Klein.

8. STAFF COMMUNICATIONS

Many of the Commissioners expressed a desire for Staff to explore options to revise the Municipal Code so that minor applications such as those that were considered this evening do not require Planning Commission approval.

Senior Planner Jeff Ballantine discussed the City Council/Planning Commission Joint Study Session for the El Cerrito Plaza BART Transit Oriented Development that occurred on August 17, 2021. Jeff also discussed an upcoming accessory dwelling unit (ADU) ordinance as well as an upcoming proposal for Vehicle Miles Traveled (VMT) thresholds pursuant to SB 743, for consideration by the Planning Commission.

9. ADJOURNMENT

8:10

DRAFT



Community Development Department
Planning and Building Division
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PLANNING COMMISSION STAFF REPORT September 15, 2021

ACCESSORY DWELLING UNIT ORDINANCE

DETAILS

Applicant: City of El Cerrito

Location: City-wide

Request: Recommendation to City Council on a Zoning Text Amendment for Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) regulations

CEQA: Pursuant to CEQA Guidelines Section 15282(h), the adoption of an ordinance regarding accessory dwelling units in a single-family or multifamily residential zone by a city to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code is statutorily exempt from the requirements of CEQA.

EXECUTIVE SUMMARY

In the fall of 2019, the Governor signed several bills that amend California Government Code 65852.2 and 65852.22 that provide greater allowance for ADUs and Junior Accessory Dwelling Units (JADUs) and limit the requirements that cities can impose on their development. These bills include SB 13 and ABs: 68, 587, 670, 670, 671, and 881. The bills became effective January 1, 2020, and required that the El Cerrito Municipal Code (ECMC) be amended for consistency with them.

On December 17, 2019, the El Cerrito City Council adopted Ordinance 2019-10—an urgency ordinance amending Title 19 of the El Cerrito Municipal Code regarding ADUs and Junior ADUs. The urgency ordinance became effective immediately, as an interim measure. The Urgency Ordinance is now set to expire on December 15, 2021 with no further options to extend. Therefore, in order for the regulations to carry forward, a permanent ordinance must be adopted to replace the urgency ordinance.

Pursuant to Section 19.40.040 ECMC, permanent amendments to the Zoning Ordinance (Title 19, ECMC) require the Planning Commission to conduct a public hearing and submit a recommendation on the proposed amendment to the City Council.

Staff recommends that the Planning Commission provide a recommendation to the City Council to adopt the proposed Zoning Text Amendment included in the draft resolution in Attachment 1.

Background

Over the past two decades, the State of California has adopted a number of laws that encourage the development of Accessory Dwelling Units (ADUs) and limit the requirements that cities and other local agencies may impose on them. On June 6, 2017 the El Cerrito City Council adopted Ordinance 2017-04 amending various sections of the El Cerrito Municipal Code related to ADUs in order to comply with two California legislative bills (SB1069 and AB2299), which were adopted in 2016.

In the fall of 2019, the Governor signed several more bills that amended California Government Code 65852.2 and 65852.22, providing greater allowance for ADUs and Junior Accessory Dwelling Units (JADUs) and limit the requirements that cities can impose on their development. These bills include SB 13 and ABs: 68, 587, 670, 670, 671, and 881. The bills became effective January 1, 2020, and the El Cerrito Municipal Code (ECMC) must be amended for consistency with them. A Planning Commission study session regarding this new legislation was held on January 15, 2020. The Legislative Counsel's Digest of these bills is provided in Attachment 2.

An ADU is a secondary dwelling unit with complete independent living facilities for one or more persons and is generally a detached unit separated from the primary structure or an attached unit that is attached to or included in the primary structure. A Junior ADU is no more than 500 square feet in size and contained entirely within a single family residence. A Junior ADU may include separate sanitation facilities or may share sanitation facilities with the primary residence. A Junior ADU shall also include an efficiency kitchen with a cooking facility and a counter and cabinets of reasonable size in relation to the size of the Junior ADU. ADUs are currently regulated by Section 19.20.190 of the El Cerrito Municipal Code. Although Junior ADUs are permitted pursuant to State law, the Municipal Code does not currently contain specific standards for JADUs.

ADUs and JADUs are an effective way to increase housing options within the framework of existing neighborhoods. They can provide affordable housing for renters, a source of income for homeowners, and a housing resource for extended families, seniors, college students, and others. ADUs represent a form of infill development that can be relatively affordable to construct and/or rent and offer innovative housing choices within existing neighborhoods.

Since the El Cerrito City Council amended Section 19.20.190 in 2017 and 2019, there has been a significant increase in the construction of ADUs in the City. So far in 2021 16 building permits for ADUs have been issued. In 2020 12 building permits for ADUs were issued. In 2019, 22 building permits for ADUs were issued. In 2018, there were eighteen building permits for ADUs issued. There was one ADU building permit issued in 2017; four in 2016; and four in 2015.

Ordinance Process

California Government Code Section 65852.2(a)(4), as amended, provides that any existing local ADU ordinance failing to meet the requirements of the new state law shall be null and void unless and until the local agency adopts a new ordinance complying with the new legislation. In the absence of a valid local ordinance, the new state law instead provides a set of default standards governing local agencies' regulation and approval of ADUs.

The state legislation became effective on January 1, 2020. In order to ensure that the City's proposed regulations are in effect on that date and do not revert to the state's default standards, on December 17, 2019, the El Cerrito City Council adopted Ordinance 2019-10—an urgency ordinance amending Title 19 of the El Cerrito Municipal Code regarding accessory dwelling units and junior accessory dwelling units. The urgency ordinance became effective immediately, as an interim measure. The Urgency Ordinance is now set to expire on December 15, 2021 with no further options to extend, therefore in order for the regulations to carry forward, a permanent ordinance needs to be adopted to replace the urgency ordinance.

Since the adoption of the urgency ordinance, City staff has been in communication with staff from the State Department of Housing and Community Development (HCD). HCD staff have assisted City staff in interpreting the various legislative acts and changes to the Government Code that facilitated the need for this update to the Municipal Code. HCD staff reviewed the City's interim ordinance and gave feedback to City staff to ensure compliance with applicable State laws. The ordinance language in the draft resolution (Attachment 1) reflects the input from HCD staff. Pursuant to Section 19.40.040, ECMC, permanent amendments to the Zoning Ordinance (Title 19, ECMC) require the Planning Commission to conduct a public hearing and submit a recommendation on the proposed amendment to the City Council. The City Council may then approve, modify, or reject the recommendation of the Planning Commission. The City Council would need to have the first reading and introduction by November 2, 2021 and the second reading and adoption by November 16, 2021 so that the ordinance could go into effect 30 days after adoption on December 16, 2021. The required findings for a Zoning Text Amendment are included in Section 19.40.040(D) and are provided below in this report.

Analysis

The proposed permanent ordinance would permanently adopt all standards of the interim ordinance with minor changes resulting from input from HCD staff.

The following is a description of the major aspects of the ordinance and the changes that are proposed to the interim ordinance:

1. Automatic zoning approval of certain ADUs/JADUs

Consistent with the requirements of AB 881, certain types of ADUs and JADUs would be permitted without any type of zoning permit. These ADUs and JADUs could proceed directly to the building permit process. These categories include:

On lots with an existing or proposed single family dwelling:

- One Interior ADU or JADU located entirely within an existing primary dwelling or existing accessory structure.
- One ADU that is detached from the primary dwelling unit with no more than 800 square feet, at least 4-foot rear and side setbacks, and no more than 16 feet tall.

On lots with an existing multifamily dwelling or duplex:

- At least one ADU within the portion of an existing multifamily dwelling structure not used as livable space. The number of ADUs allowed per structure shall not exceed twenty-five percent of the existing multifamily dwellings within a structure.
- Two ADUs detached from the primary dwelling units with at least 4-foot rear and side setbacks and no more than 16 feet tall.

Additionally, the proposed ordinance allows for the creation of an ADU with no more than 800 square feet that does not exceed 16 feet in height with minimum side and rear setbacks of 4 feet without consideration of unit size, lot size, lot coverage, or open space.

ADUs not included in these categories would be subject to the development standards of the proposed ordinance.

2. Maximum floor area

The current ordinance allows a maximum floor area for ADUs of up to fifty percent of the habitable floor area of the primary residence or 1,200 square feet, whichever is less. The proposed ordinance contains the following floor area provisions, as required by AB 881:

- Studio and one-bedroom ADUs may be a maximum of 850 square feet
- ADUs with more than one bedroom may be a maximum of 1,000 square feet
- Attached ADUs are subject to the above standards or may be up to 50% of the floor area of the existing primary dwelling unit, whichever is less. However, ADUs that are 800 square feet or less must be allowed regardless of any square footage requirement.

3. Minimum Setbacks and Maximum Height

As required by AB 881, the proposed ordinance permits a minimum side and rear setbacks of 4 feet for detached and attached ADUs and a maximum height of 16 feet for detached ADUs. This is a reduction from the standards in the existing ordinance, which permit a maximum height of 15 feet for ADUs and require setbacks consistent with requirements of the applicable zoning district (5- to 6-foot side setbacks and 15- to 25-foot rear setbacks).

4. Replacement Parking

Although local jurisdictions may require off-street parking spaces for ADUs in certain instances, at the City Council's request, the ADU ordinance adopted in 2017 does not require any parking spaces for ADUs. This provision is also included in the proposed ordinance. In addition, consistent with the requirements of AB 881, the proposed ordinance eliminates the existing requirement that off-street parking spaces be replaced when a garage, carport, or covered parking is converted to an ADU or is demolished in conjunction with the construction of an ADU. Similarly, no parking spaces nor replacement parking shall be required for JADUs.

5. Deed Restriction – Owner Occupancy Requirement

Consistent with the requirements of AB 881, the proposed ordinance removes requirement for owner occupancy of a property for ADUs developed between January 1, 2020 and December 31, 2024. This provision allows both the primary residence and any ADU to be rented. JADUs will still require an owner occupancy deed restriction to be filed.

6. Short term rentals

Pursuant to the requirements of AB 881, the proposed ordinance provides that the ADUs and Junior ADUs that require automatic approval shall not be rented for a term less than 30 days.

7. Windows

Although not required by State legislation, in order to address potential impacts to adjacent properties, staff has included a development standard related to windows on ADUs. The proposed ordinance would require all Accessory Dwelling Unit windows facing a side yard or rear yard of an adjacent property and located closer than 5 feet to the shared property line shall be clerestory (minimum of 6.5 feet above the finished floor height). City staff recommend this requirement to minimize privacy impacts of proposed ADUs upon neighboring properties.

8. Changes to the Interim Ordinance

As mentioned previously in this report the proposed permanent ordinance would permanently adopt all standards of the interim ordinance with minor changes resulting from input from HCD staff.

To more correctly reflect the language of AB 881, Section 19.20.190(B)(2)(a)(i) was changed from “the number of ADUs allowed on a lot shall not exceed twenty-five percent of the existing multifamily dwellings on a lot” to “the number of ADUs allowed per structure shall not exceed twenty-five percent of the existing multifamily dwellings within a structure”.

Pursuant to the requirements of AB 68, Section 19.20.190(C) was amended to read as “Accessory Dwelling Units may be established on any lots zoned to allow single family or multifamily residential uses” instead of “Accessory Dwelling Units may be established on any lot in a RS, RD or RM zoning district, as identified in

Chapter 19.06, or any lot in the TOHIMU or TOMIMU district as identified in San Pablo Avenue Specific Plan, incorporated by reference in Section 19.15.020.”

Whereas in the interim ordinance the deed restriction and owner occupancy sections were originally different sections, Sections 19.20.190(D)(5) & 19.20.190(D)(7), these two sections are now combined so that is more apparent that a deed restriction will not be required for any ADU permitted before December 31, 2024.

Pursuant to the requirements of AB 68 & 881 Section 19.20.190(E)(2)(c) and 19.20.190(E)(7) were altered to include language to make it more apparent that regardless of any unit size, lot size, lot coverage, floor area ratio, and/or open space requirements an ADU that is up 800 sq ft with the minimum four-foot side and rear yard setbacks, and a maximum height of 16 feet must be allowed.

In the interim ordinance, Section 19.20.190(E)(5)(b) requires detached ADUs to not be located closer than the primary dwelling unit(s) to the street-facing side lot line. Pursuant to the requirements of AB 881. This section was removed because the bill requires a setback of no more than 4 feet for an accessory dwelling unit that is not converted from an existing structure.

General Plan Compliance

The proposed amendments are consistent with the El Cerrito General Plan and the following policies and implementation measures contained in the Land Use, Community Design, and Housing Elements.

The proposed Zoning Text Amendment implements a number of goals and policies, or is consistent with applicable goals and policies, of the 1999 General Plan. Relevant goals and policies include:

- Goal LU1: A high-quality residential character within El Cerrito.
 - Policy LU1.1: Predominate Single Family Use. Ensure that the existing single family neighborhoods remain predominantly single-family use, but including accessory units, by prohibiting incompatible uses.
 - Policy LU1.5: Suitable Housing. Promote suitably located housing and services for all age groups within the city.
- Goal CD4: Well designed buildings that are compatible with their surroundings.
 - Policy CD4.1: Compatibility in Building Scale. Avoid big differences in building scale and character between developments on adjoining lots.

ADUs as regulated in the proposed Zoning Text Amendment meet all of the above listed goals and policies. By allowing flexibility in size, location and replacement parking requirements, this action will allow these new units suitable for all age groups to be developed in locations throughout the City zoned to allow single family or multifamily dwelling residential use. They will also generally allow the staff to ensure that issues such as architectural compatibility, scale and character are brought into the design of the project.

2015 Housing Element

The proposed zoning ordinance implements a number of goals and policies of the 2015 Housing Element of the General Plan. It relates to both neighborhood preservation and new housing production.

- Goal H1: Existing Housing. Conserve and improve El Cerrito’s existing housing supply.
 - Policy H1.1: Encourage neighborhood preservation and housing rehabilitation of viable older housing to preserve neighborhood character and, where possible, retain a supply of very low-, low-, and moderate-income units.

- Goal H2: New Housing Development: Encourage the development of housing at all income levels to meet regional housing needs allocation by facilitating housing development and minimizing the impact of potential governmental constraints on the development of housing.
 - Policy H2.4: Encourage and facilitate the construction of second/accessory dwelling units, pursuant to the City’s Second Unit regulations (Section 19.20.190 of the El Cerrito Zoning Ordinance).
 - Policy H2.7: Encourage innovative housing approaches in the design and ownership of units to increase the availability of affordable housing.
 - Policy H2.10: Periodically review the City’s regulations, ordinances and development fees to ensure they do not unduly constrain the production, maintenance and improvement of housing.
 - Policy H2.11: Provide for streamlined processing of residential projects to minimize the time and costs in order to encourage housing production.

In addition to policies, the Housing Element includes an implementation program that identifies strategies and actions to implement the goals of the Housing Element. Implementation item H2.3, Fast Track Permitting for Second Units, is to continue to fast-track processing for second units meeting established City standards and provide additional information on second units and the application process for public distribution. This action will fulfill that task.

As noted, this action is consistent with many Housing Element Policies. It will allow more homeowners to take advantage of adding an ADU and/or a Junior ADU to their primary residence. This opportunity will let them to afford and/or reinvest in their homes while providing new housing stock to the community. It will also allow for considerable streamlining some of the barriers of the current process for ADUs by easing setback requirements, parking replacement requirements, and easing floor area restrictions. Finally, removing the requirement for obtaining Planning approval prior to applying for a building permit for numerous types of ADUs and JADUs will also decrease time and costs of housing production.

Public Notice and Comment

The required public notice for the project was published in the East Bay Times on September 1, 2021.

Environmental Review

Pursuant to CEQA Guidelines Section 15282(h), the adoption of an ordinance regarding accessory dwelling units in a single-family or multifamily residential zone by a city to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code is statutorily exempt from the requirements of CEQA.

Required Findings

The Planning Commission must make the following findings as outlined in Section 19.40.040 ECMC in order to recommend City Council approval of the Zoning Text Amendment:

1. The proposed amendment is consistent with the goals and policies of all elements of the General Plan, and any applicable specific plan.

The Zoning Text Amendment is consistent with the El Cerrito General Plan and the San Pablo Avenue Specific Plan. As described above, the proposed Zoning Text Amendment implements General Plan Policies LU1.1, LU1.5, and CD4.1 and Housing Element Policies H1.1, H2.4, H2.7, H2.10, and H2.11. By allowing flexibility in size, location and parking requirements, these regulations will allow these new units, which are suitable for all age groups, to be developed in locations throughout the City. They will

also ensure that issues such as architectural compatibility and scale are addressed during the design process.

Further, it will allow more property owners to add Accessory Dwelling Units (ADUs) and/or Junior Accessory Dwelling Units (JADUs) to their properties. This opportunity will allow property owners make improvements to properties while providing new housing stock to the community. It will also allow for streamlining of the approval process for ADUs and JADUs, by modifying permit processes, setback requirements, parking requirements, and floor area restrictions.

2. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

As proposed, the Zoning Text Amendment will not be detrimental to the public interest, health, safety, convenience or welfare of the city because it will allow new and innovative housing production while ensuring compliance with all applicable building and safety codes in effect. Basic building and fire code compliance will be part of the building permit review of each new Accessory Dwelling Unit and Junior Accessory Dwelling Unit.

3. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).

The proposed Zoning Text Amendment is exempt from CEQA pursuant to CEQA Guidelines Section 15282(h), which states that the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code is statutorily exempt from the requirements of CEQA.

4. The proposed Zoning Text Amendment is internally consistent with other applicable provisions of this Zoning Code.

The proposed Zoning Text Amendment is internally consistent with other applicable provisions of the Zoning Code (Title 19 ECMC). The proposed Zoning Text Amendment includes proposed amendments to parking regulations and to definitions in Chapters 19.24, 19.46, and 19.47 ECMC to ensure that provisions in the proposed Zoning Text Amendment are internally consistent with all other applicable provisions in the Zoning Code.

Staff Recommendation

Based on the information contained in this report, staff recommends that the Planning Commission recommend City Council approval of the proposed Zoning Text Amendment, as included in the draft resolution in Attachment 1.

Proposed Motion

Move adoption of Planning Commission Resolution PC 2021-13 recommending that the City Council amend Title 19 of the El Cerrito Municipal Code to amend Chapter 19.47 and Sections 19.20.190, 19.46.030, and 19.24.040 regarding Accessory Dwelling Units and to add Section 19.20.195 regarding Junior Accessory Dwelling Units.

Attachments

1. Draft Resolution
2. Legislative Digests of State ADU Bills

Planning Commission Resolution No. PC2021-13

A RESOLUTION OF THE EL CERRITO PLANNING COMMISSION RECOMMENDING THAT THE CITY COUNCIL AMEND TITLE 19 OF THE EL CERRITO MUNICIPAL CODE TO AMEND CHAPTER 19.47 AND SECTIONS 19.20.190, 19.46.030, AND 19.24.040 REGARDING ACCESSORY DWELLING UNITS AND TO ADD SECTION 19.20.195 REGARDING JUNIOR ACCESSORY DWELLING UNITS

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, and general welfare, of their citizens; and

WHEREAS, accessory dwelling units (ADUs) are an effective way to increase housing options without changing neighborhood character; they can provide affordable housing for renters, a source of income for homeowners, and a housing resource for extended families, seniors, college students, and others; they represent a form of infill development that can be relatively affordable to construct and/or rent and offer innovative housing choices within existing neighborhoods; and

WHEREAS, Senate Bill (SB) 1069 and Assembly Bill (AB) 2299 became effective on January 1, 2017, adding sections 65852.1 and 65852.2 to the Government Code and modifying the requirements for second units or ADUs related to unit size, parking, and fees; and

WHEREAS, on June 6, 2017, the El Cerrito City Council adopted Resolution 2017-04 amending various section of the El Cerrito Municipal Code related to ADUs in order to comply with SB 1069 and AB 2299; and

WHEREAS, on October 9, 2019, Governor Newsom signed into law a series of bills intended to further increase the state's supply of affordable housing by facilitating the construction of ADUs (AB 68, AB 587, AB 670, AB 671, AB 881 and SB 13) (the "new ADU laws"); and

WHEREAS, effective January 1, 2020, California Government Code Section 65852.2(a)(4), as amended, provides that any existing local ADU ordinance failing to meet the requirements of the new ADU laws shall be null and void unless and until the local agency adopts a new ordinance complying with the new ADU laws; and

WHEREAS, in the absence of a valid local ordinance, the new ADU laws instead provide a set of default standards governing local agencies' regulation and approval of ADUs; and

WHEREAS, on December 17, 2019, the El Cerrito City Council adopted Ordinance 2019-10— an urgency ordinance amending Title 19 of the El Cerrito Municipal Code regarding accessory dwelling units and junior accessory dwelling units; and

WHEREAS, pursuant to CEQA Guidelines Section 15282(h), the adoption of an ordinance regarding accessory dwelling units in a single-family or multifamily residential zone by a city to

ATTACHMENT 1

implement the provisions of Sections 65852.1 and 65852.2 of the Government Code is statutorily exempt from the requirements of CEQA.

WHEREAS, on September 15, 2021, the Planning Commission of El Cerrito, after due consideration of all evidence and reports offered for review, does find and determine the following pursuant to Section 19.40.040, ECMC:

1. The Zoning Text Amendment is consistent with the El Cerrito General Plan and the San Pablo Avenue Specific Plan. As described above, the proposed Zoning Text Amendment implements General Plan Policies LU1.1, LU1.5, and CD4.1 and Housing Element Policies H1.1, H2.4, H2.7, H2.10, and H2.11. By allowing flexibility in size, location and parking requirements, these regulations will allow these new units, which are suitable for all age groups, to be developed in locations throughout the City. They will also ensure that issues such as architectural compatibility and scale are addressed during the design process.

Further, it will allow more property owners to add Accessory Dwelling Units (ADUs) and/or Junior Accessory Dwelling Units (JADUs) to their properties. This opportunity will allow property owners make improvements to properties while providing new housing stock to the community. It will also allow for streamlining of the approval process for ADUs and JADUs, by modifying permit processes, setback requirements, parking requirements, and floor area restrictions.

2. As proposed, the Zoning Text Amendment will not be detrimental to the public interest, health, safety, convenience or welfare of the city because it will allow new and innovative housing production while ensuring compliance with all applicable building and safety codes in effect. Basic building and fire code compliance will be part of the building permit review of each new Accessory Dwelling Unit and Junior Accessory Dwelling Unit.
3. The proposed Zoning Text Amendment is exempt from CEQA pursuant to CEQA Guidelines Section 15282(h), which states that the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code is statutorily exempt from the requirements of CEQA.
4. The proposed Zoning Text Amendment is internally consistent with other applicable provisions of the Zoning Code (Title 19 ECMC). The proposed Zoning Text Amendment includes proposed amendments to parking regulations and to definitions in Chapters 19.24, 19.46, and 19.47 ECMC to ensure that provisions in the proposed Zoning Text Amendment are internally consistent with all other applicable provisions in the Zoning Code.

NOW, THEREFORE, BE IT RESOLVED that the El Cerrito Planning Commission, based on its review and consideration of the facts, the staff report, and all public testimony, hereby recommends that the City Council approve the Zoning Text Amendment, as follows:

Section 1. Amendment of the El Cerrito Municipal Code. Section 19.46.030(A) of the El Cerrito Municipal Code is amended to read in full as follows:

Section 19.46.030 Residential Use Classifications

A. Residential Housing Types

1. **Single Family Dwelling.** One dwelling unit, attached or detached, located on a single lot. This use includes manufactured housing but not mobile homes
2. **Accessory Dwelling Unit.** An Attached, Detached, or Interior residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary dwelling, and/or as otherwise defined in California Government Code Section 65852.2, as amended from time to time.
 - (a) **Attached Accessory Dwelling Unit or Attached ADU.** An Accessory Dwelling Unit that is constructed as a physical expansion (i.e. addition) of a proposed or existing primary dwelling and shares a common wall with the primary dwelling .
 - (b) **Detached Accessory Dwelling Unit or Detached ADU.** An Accessory Dwelling Unit that is constructed as a separate structure and fully detached from a proposed or existing primary dwelling.
 - (c) **Interior Accessory Dwelling Unit or Interior ADU.** An Accessory Dwelling Unit located within an existing structure. An existing structure means an existing permitted or otherwise legal dwelling unit, including all fully enclosed areas such as a partial basement, an attached garage, or an accessory structure that can be made safety habitable under building codes.
2. **Junior Accessory Dwelling Unit or JADU.** A unit that is no more than 500 square feet in size and contained entirely within a single family residence, and may include separate sanitation facilities or share sanitation facilities with the existing structure, or as otherwise defined in California Government Code Section 65852.22, as amended from time to time.
3. **Duplex - Two-Family Dwelling.** A single building that contains two primary dwelling units, or a single lot with two freestanding buildings, each of which is designed for occupancy by one household.
4. **Multiple Family Residential.** Three or more dwelling units on a single lot. Types of multiple-family dwellings include: townhouses, garden apartments, and other apartment buildings.

Section 2. Amendment of the El Cerrito Municipal Code. The terms Efficiency Unit, Living Area, and Passageway and their corresponding definitions shall be added to Sections 19.47.010 and 19.47.020 of the El Cerrito Municipal Code as follows:

Section 19.47.010 List of Terms

Efficiency Unit

Living Area

Passageway

Section 19.47.020 Definitions

Efficiency Unit. Shall have the same meaning as defined in Section 17958.1 of the Health and Safety Code, as amended from time to time.

Living Area. Shall have the same meaning as defined in California Government Code Section 65852.2, as amended from time to time.

Passageway. Shall have the same meaning as defined in California Government Code Section 65852.2, as amended from time to time.

Section 3. Amendment of the El Cerrito Municipal Code. Section 19.20.190 of the El Cerrito Municipal Code is amended to read in full as follows:

Section 19.20.190 Accessory Dwelling Units

- A. **Purpose.** The following regulations are intended to comply with Government Code Sections 65852.150 and 65852.2 (or as otherwise amended), and implement the General Plan by allowing Accessory Dwelling Units subject to the standards and requirements herein.
- B. **Applicability.** An Accessory Dwelling Unit Permit shall be required for all Accessory Dwelling Units, subject to the following exceptions:
1. ADUs on Single-Family Dwelling Lots. The following Accessory Dwelling Units shall be allowed on a parcel with a proposed or existing single family dwelling, consistent with state law:
 - (a) One Interior ADU or Junior ADU subject to the following standards:
 - (i) The Interior ADU or JADU shall have exterior access.
 - (ii) The Interior ADU or JADU shall have side and rear setbacks sufficient for fire safety as determined by the Fire Marshal.
 - (iii) A Junior ADU shall be consistent with Section 19.20.195.
 - (iv) The Interior ADU or JADU shall not be rented for a term less than 30 days.
 - (b) One Detached ADU subject to the following standards:
 - (i) The Detached ADU shall not exceed 800 square feet in size.

- (ii) The side and rear setbacks of the Detached ADU shall be a minimum of four feet.
 - (iii) The height of the Detached ADU shall not exceed 16 feet.
 - (iv) The Detached ADU shall not be rented for a term less than 30 days.
 - 2. ADUs on Multifamily Dwelling and Duplex Lots. The following Accessory Dwelling Units shall be allowed on a parcel with an existing multifamily dwelling or a duplex, consistent with state law.
 - (a) At least one ADU within the portion of an existing multifamily dwelling structure or a duplex not used as livable space subject to the following standards:
 - (i) The number of ADUs allowed per structure shall not exceed twenty-five percent of the existing multifamily dwellings within a structure.
 - (ii) The space includes, but is not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.
 - (iii) The ADU shall not be rented for a term less than 30 days.
 - (b) Two Detached ADUs subject to the following standards:
 - (i) The height of the Detached ADU shall not exceed 16 feet.
 - (ii) The side and rear setbacks of the Detached ADU shall be a minimum of four feet.
 - (iii) The Detached ADU(s) shall not be rented for a term less than 30 days.
- C. Where Allowed
- 1. Accessory Dwelling Units may be established on any lots zoned to allow single family or multifamily residential uses.
- D. General Requirements. Accessory Dwelling Units shall conform to the following:
- 1. Architectural Compatibility. The architectural design, exterior materials and colors, roof pitch and style, type of windows, and trim details of an Accessory Dwelling Unit shall be substantially the same as, and visually harmonious and or compatible with the primary dwelling, as determined by the Zoning Administrator.
 - 2. Windows. All Accessory Dwelling Unit windows facing a side yard or rear yard of an adjacent property and located less than 5 feet from the shared property line shall be clerestory (minimum of 6.5 feet above the finished floor height).

3. Parking. No parking spaces shall be required. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an Accessory Dwelling Unit or converted to an Accessory Dwelling Unit, replacement off-street parking spaces shall not be required.
4. Building Code Compliance. Notwithstanding any other provision of this section, Accessory Dwelling Units shall be developed in compliance with Title 16, Buildings and Construction, of the El Cerrito Municipal Code.
5. Owner Occupancy. A legal owner of the property shall occupy either the primary dwelling or the Accessory Dwelling Unit, as the owner's primary residence, except that owner occupancy shall not be required for any Accessory Dwelling Unit permitted between January 1, 2020 and December 31, 2024, in accordance with Government Code section 65852.2(a)(6) or as otherwise amended. After December 31, 2024, a deed restriction shall be required as following:
 - (a) Deed Restriction. Before obtaining a building permit for an Accessory Dwelling Unit, the owner of the lot or parcel shall file with the County Recorder a declaration or agreement of restrictions that has been approved by the City Attorney as to its form and content, containing a reference to the deed under which the property was acquired by the owner and stating that:
 - (i) The Accessory Dwelling Unit shall not be sold separately.
 - (ii) Accessory Dwelling Unit shall be considered legal only as long as either the Primary Dwelling or the Accessory Dwelling Unit is occupied by an owner of record of the property.
 - A) This section shall only be required in accordance with Government Code section 65852.2(a)(6).
 - (iii) An Accessory Dwelling Unit shall be maintained as a separate living unit and shall not be converted as an addition to a primary dwelling unit.
 - (iv) The restrictions shall be binding upon any successor in ownership of the property and lack of compliance may result in legal action against the property owner.
6. Sale Prohibited. An Accessory Dwelling Unit may be rented, but shall not be sold or otherwise conveyed separately from the primary dwelling.

E. Development Standards

1. Setbacks.
 - (a) Detached ADUs and Attached ADUs. Side and rear setbacks shall be no less than 4 feet. Detached and Attached ADUs shall comply with the front setback requirements applicable to the primary dwelling unit(s) in the zoning district where the respective ADU is proposed, and with the Lot Location requirements below.

- (b) Interior ADUs. No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted or partially converted to an Accessory Dwelling Unit.

2. Floor Area.

- (a) Accessory Dwelling Units shall be subject to the following maximum floor area:

Studio or One Bedroom	850 square feet
More than One Bedroom	1000 square feet

- (b) An Accessory Dwelling Unit must have a floor area of at least 150 square feet and shall not preclude an Efficiency Unit.
- (c) Attached ADU. The total floor area of an Attached ADU shall not exceed 50% of the existing primary dwelling unit(s) or 800 sq. ft., whichever is more. In the event of a conflict between this subsection and the maximum floor areas in subsection (a), the Attached ADU shall be subject to the lower square footage requirement.

3. Height.

- (a) The maximum height of a Detached ADU shall be 16 feet.
- (b) The maximum height of an Attached ADU shall comply with daylight plane, building height, and any other provisions relevant to building height applicable to the primary dwelling unit in the zoning district where the Accessory Dwelling Unit is proposed.

4. Entries/Access. An Accessory Dwelling Unit shall have exterior access that is independent from that of the primary dwelling unit. No specific path or passageway shall be required in conjunction with the construction of an ADU, but the unit must meet the requirements of Title 16, Buildings and Construction, of the El Cerrito Municipal Code.

- (a) Attached ADUs. The exterior access to an Attached ADU shall be located at least 10 feet behind the exterior access to the primary unit, or shall be located on the side or rear of the dwelling.

5. Lot Location.

- (a) Detached ADUs - Interior Lots. A Detached ADU shall be located behind the primary dwelling(s) in relation to the front lot line. For the purpose of this regulation, "behind" shall mean that at least one of the following criteria is met:

- (i) All portions of the ADU are located behind all portions of the primary unit(s).
 - (ii) The ADU is located partially behind the primary dwelling unit(s), and the front façade of the ADU is at least 20 feet farther from the front lot line than is the front facade of the primary unit(s).
 - (iii) The ADU is located entirely in the rear half of the lot.
 - (b) Attached Units. If an Attached ADU is created through an addition to an existing single-family dwelling at the second or higher story of the dwelling, such ADU shall be located in the rear half of the structure.
6. Exceptions. Exceptions to the above standards shall require an Administrative Use Permit, according to the procedures of Chapter 19.34, Use Permits. In addition to the findings for approval of Section 19.34.040, the decision-making authority shall only grant approval if it finds the Accessory Dwelling Unit is compatible with, and preserves, the applicable residential character of the primary dwelling and the surrounding neighborhood. Additionally:
- (a) The hearing shall be publicly noticed not less than twenty-one days in the local newspaper and to all property owners located within a three hundred-foot radius.
 - (b) Any decision of the Zoning Administrator may be appealed directly to the Planning Commission.
7. Limitations. Notwithstanding any local development standards, including but not limited to unit size, lot size, lot coverage, floor area ratio, and/or open space; an Accessory Dwelling Unit that is no more than 800 square feet with minimum four-foot side and rear yard setbacks, and a maximum height of 16 feet, shall be allowed provided the unit will be constructed in compliance with all other local development standards.

Section 4. Amendment of the El Cerrito Municipal Code. Section 19.20.195 of the El Cerrito Municipal Code is added to read in full as follows:

Section 19.20.195 Junior Accessory Dwelling Units

- A. Applicability. This section applies to Junior Accessory Dwelling Units. Junior Accessory Dwelling Units in compliance with this section shall be allowed pursuant to Section 19.20.190(B)(1)(a).
- B. Where Allowed. Junior Accessory Dwelling Units may be established on any lot in a RS zoning district, as identified in Chapter 19.06, with a proposed or existing primary single-family dwelling. Only one Junior Accessory Dwelling Unit is permitted per lot.
- C. General Requirements. Junior Accessory Dwelling Units shall conform to the following:

ATTACHMENT 1

1. Parking. No parking spaces shall be required. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of a Junior Accessory Dwelling Unit or converted to a Junior Accessory Dwelling Unit, replacement off-street parking spaces shall not be required.
 2. Short-term Rentals. Junior Accessory Dwelling Units may not be rented for less than 30 days.
 3. Building Code Compliance. Notwithstanding any other provision of this section, Junior Accessory Dwelling Units shall be developed in compliance with Title 16, Buildings and Construction, of the El Cerrito Municipal Code.
 4. Owner Occupancy. A legal owner of the property shall occupy either the primary dwelling or the Junior Accessory Dwelling Unit, as the owner's primary residence. Prior to the issuance of a building permit for a Junior Accessory Dwelling Unit, the applicant shall record notice of this requirement as a deed restriction.
 - (a) Exception. This section shall not apply if the owner is a governmental agency, land trust, or housing organization.
 5. Sale Prohibited. A Junior Accessory Dwelling Unit shall not be sold, transferred, or assigned separately from the primary dwelling.
 6. Deed Restriction. Before obtaining a building permit for a Junior Accessory Dwelling Unit, the owner of the lot or parcel shall file with the County Recorder a declaration or agreement of restrictions that has been approved by the City Attorney as to its form and content, containing a reference to the deed under which the property was acquired by the owner and stating that:
 - (a) The Junior Accessory Dwelling Unit shall not be sold separately; and
 - (b) The Junior Accessory Dwelling Unit shall be considered legal only as long as either the Primary Dwelling or the Accessory Dwelling Unit is occupied by an owner of record of the property; and
 - (c) The restrictions shall be binding upon any successor in ownership of the property and lack of compliance may result in legal action against any property owner; and
 - (d) The Junior Accessory Dwelling Unit shall be restricted to the size and attributes in accordance with this section.
- D. Development Standards
1. Location. A Junior Accessory Dwelling Unit shall be constructed entirely within the walls of the proposed or existing single-family residence.
 2. Entries/Access. A Junior Accessory Dwelling Unit shall have exterior access that is independent from that of the primary dwelling unit. No specific path or passageway is required in conjunction with the construction of a JADU, but the

unit must meet the requirements of Title 16, Buildings and Construction, of the El Cerrito Municipal Code.

3. Efficiency Kitchen. A Junior Accessory Dwelling Unit shall include an efficiency kitchen, which shall include all of the following:
 - (a) A cooking facility with appliances; and
 - (b) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the Junior Accessory Dwelling Unit.

Section 5. Amendment of the El Cerrito Municipal Code. The Required Off-Street Parking Spaces for Accessory Dwelling Unit in Table 19.24-A within Section 19.24.040 of the El Cerrito Municipal Code is amended as follows: No parking spaces are required for ADUs.

CERTIFICATION

I CERTIFY that this resolution was adopted by the El Cerrito Planning Commission at a regular meeting held on September 15, 2021 upon motion of Commissioner _____, second by Commissioner _____:

AYES:

NOES:

ABSTAIN:

ABSENT:

Sean Moss, AICP
Planning Manager

Senate Bill No. 13
CHAPTER 653

An act to amend, repeal, and add Section 65852.2 of the Government Code, and to add and repeal Section 17980.12 of the Health and Safety Code, relating to land use.

[Approved by Governor October 09, 2019. Filed with Secretary of State October 09, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 13, Wieckowski. Accessory dwelling units.

(1) The Planning and Zoning Law authorizes a local agency, by ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, to provide for the creation of accessory dwelling units in single-family and multifamily residential zones in accordance with specified standards and conditions. Existing law requires any ordinance adopted by a local agency to comply with certain criteria, including that it require accessory dwelling units to be either attached to, or located within, the proposed or existing primary dwelling or detached if located within the same lot, and that it does not exceed a specified amount of total area of floor space.

This bill would, instead, authorize the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The bill would also revise the requirements for an accessory dwelling unit by providing that the accessory dwelling unit may be attached to, or located within, an attached garage, storage area, or other structure, and that it does not exceed a specified amount of total floor area.

(2) Existing law generally authorizes a local agency to include in the ordinance parking standards for accessory dwelling units, including authorizing a local agency to require the replacement of parking spaces if a garage, carport, or covered parking is demolished to construct an accessory dwelling unit. Existing law also prohibits a local agency from imposing parking standards on an accessory dwelling unit if it is located within one-half mile of public transit.

This bill would, instead, prohibit a local agency from requiring the replacement of parking spaces if a garage, carport, or covered parking is demolished to construct an accessory dwelling unit. The bill would also prohibit a local agency from imposing parking standards on an accessory dwelling unit that is located within one-half mile walking distance of public transit, and would define the term “public transit” for those purposes.

(3) Existing law authorizes a local agency to establish minimum and maximum unit size limitations on accessory dwelling units, provided that the ordinance permits an efficiency unit to be constructed in compliance with local development standards.

This bill would prohibit a local agency from establishing a minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit, as defined. The bill would also prohibit a local agency from establishing a maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than 850 square feet, and 1,000 square feet if the accessory dwelling unit contains more than one bedroom. The bill would also instead prohibit a local agency from establishing any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size for either attached or detached dwelling units that prohibit at least an 800

square foot accessory dwelling unit that is at least 16 feet in height and with a 4-foot side and rear yard setbacks.

(4) Existing law prohibits a local agency from utilizing standards to evaluate a proposed accessory dwelling unit on a lot that is zoned for residential use that includes a proposed or existing single-family dwelling other than the criteria described above, except that, among one other exception, a local agency may require an applicant for a permit to be an owner-occupant of either the primary or accessory dwelling unit as a condition of issuing a permit.

This bill, until January 1, 2025, would instead prohibit a local agency from imposing an owner-occupant requirement as described above.

(5) Existing law requires a local agency that has not adopted an ordinance governing accessory dwelling units to approve or disapprove the application ministerially and without discretionary review within 120 days after receiving the application.

The bill would require a local agency, whether or not it has adopted an ordinance, to consider and approve an application, ministerially and without discretionary review, within 60 days after receiving a completed application. The bill would also provide that, if a local agency does not act on the application within that time period, the application shall be deemed approved.

(6) Existing law requires fees for an accessory dwelling unit to be determined in accordance with the Mitigation Fee Act. Existing law also requires the connection fee or capacity charge for an accessory dwelling unit requiring a new or separate utility connection to be based on either the accessory dwelling unit's size or the number of its plumbing fixtures.

This bill would prohibit a local agency, special district, or water corporation from imposing any impact fee, as specified, upon the development of an accessory dwelling unit less than 750 square feet, and would require any impact fees to be charged for an accessory dwelling unit of 750 square feet or more to be proportional to the square footage of the primary dwelling unit. The bill would revise the basis for calculating the connection fee or capacity charge specified above to either the accessory dwelling unit's square feet or the number of its drainage fixture unit values, as specified.

(7) Existing law, for purposes of these provisions, defines "living area" as the interior habitable area of a dwelling unit including basements and attics, but not a garage or accessory structure.

This bill would define "accessory structure" to mean a structure that is accessory and incidental to a dwelling located on the same lot.

(8) Existing law requires a local agency to submit a copy of the adopted ordinance to the Department of Housing and Community Development and authorizes the department to review and comment on the ordinance.

This bill would instead authorize the department to submit written findings to the local agency as to whether the ordinance complies with the statute authorizing the creation of an accessory dwelling unit, and, if the department finds that the local agency's ordinance does not comply with those provisions, would require the department to notify the local agency within a reasonable time. The bill would require the local agency to consider the department's findings and either amend its ordinance to comply with those provisions or adopt it without changes and include specified findings. If the local agency does not amend its ordinance or does not adopt those findings, the bill would require the department to notify the local agency and authorize it to notify the Attorney General that the local agency is in violation of state law, as provided. The bill would authorize the department to adopt guidelines to implement uniform standards or criteria to supplement or clarify the provisions authorizing accessory dwelling units.

(9) Existing law requires the planning agency of each city and county to adopt a general plan that includes a housing element that identifies adequate sites for housing. Existing law authorizes the department to allow a city or county to do so by a variety of methods and also authorizes the department to allow a city or county to identify sites for accessory dwelling units, as specified.

This bill would state that a local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing in accordance with those provisions.

(10) Existing law, the State Housing Law, a violation of which is a crime, establishes statewide construction and occupancy standards for buildings used for human habitation. Existing law requires, for those purposes, that any building, including any dwelling unit, be deemed to be a substandard building when a health officer determines that any one of specified listed conditions exists to the extent that it endangers the life, limb, health, property, safety, or welfare of the public or its occupants.

This bill would authorize the owner of an accessory dwelling unit built before January 1, 2020, or built on or after January 1, 2020, under specified circumstances, that receives a notice to correct violations or abate nuisances to request that the enforcement of the violation be delayed for 5 years if correcting the violation is not necessary to protect health and safety, as determined by the enforcement agency, subject to specified requirements. The bill would make conforming and other changes relating to the creation of accessory dwelling units.

By increasing the duties of local agencies with respect to land use regulations, and because the bill would expand the scope of a crime under the State Housing Law, the bill would impose a state-mandated local program.

(11) This bill would incorporate additional changes to Section 65852.2 of the Government Code proposed by AB 68 and AB 881 to be operative only if this bill and either or both AB 68 and AB 881 are enacted and this bill is enacted last.

(12) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

DIGEST KEY

Vote: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: YES

Assembly Bill No. 68
CHAPTER 655

An act to amend Sections 65852.2 and 65852.22 of the Government Code, relating to land use.

[Approved by Governor October 09, 2019. Filed with Secretary of State October 09, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 68, Ting. Land use: accessory dwelling units.

(1) The Planning and Zoning Law authorizes a local agency to provide, by ordinance, for the creation of accessory dwelling units in single-family and multifamily residential zones and requires such an ordinance to impose standards on accessory dwelling units, including, among others, lot coverage. Existing law also requires such an ordinance to require the accessory dwelling units to be either attached to, or located within, the living area of the proposed or existing primary dwelling, or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

This bill would delete the provision authorizing the imposition of standards on lot coverage and would prohibit an ordinance from imposing requirements on minimum lot size. The bill would revise the requirements for an accessory dwelling unit by providing that the accessory dwelling unit may be attached to, or located within, an attached garage, storage area, or an accessory structure, as defined.

(2) Existing law requires a local agency to ministerially approve or deny a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit within 120 days of receiving the application.

This bill would instead require a local agency to ministerially approve or deny a permit application for the creation of an accessory dwelling unit or junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot, and would authorize the permitting agency to delay acting on the permit application if the permit application is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, as specified.

(3) Existing law prohibits the establishment by ordinance of minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the proposed or existing primary dwelling, if the limitations do not permit at least an efficiency unit to be constructed.

This bill would instead prohibit the imposition of those limitations if they do not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with 4-foot side and rear yard setbacks to be constructed. This bill would additionally prohibit the imposition of limits on lot coverage, floor area ratio, open space, and minimum lot size if they prohibit the construction of an accessory dwelling unit meeting those specifications.

(4) Existing law requires ministerial approval of a building permit to create within a zone for single-family use one accessory dwelling unit per single-family lot, subject to specified conditions and requirements.

This bill would instead require ministerial approval of an application for a building permit within a residential or mixed-use zone to create the following: (1) one accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if certain requirements are met; (2) a detached, new construction accessory dwelling unit that meets certain requirements and would

authorize a local agency to impose specified conditions relating to floor area and height on that unit; (3) multiple accessory dwelling units within the portions of an existing multifamily dwelling structure provided those units meet certain requirements; or (4) not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to certain height and rear yard and side setback requirements.

(5) Existing law requires a local agency to submit its accessory dwelling unit ordinance to the Department of Housing and Community Development within 60 days after adoption and authorizes the department to review and comment on the ordinance.

This bill would instead authorize the department to submit written findings to a local agency as to whether the local ordinance complies with state law, and would require the local agency to consider the department's findings and to amend its ordinance to comply with state law or adopt a resolution with specified findings. The bill would require the department to notify the Attorney General that the local agency is in violation of state law if the local agency does not amend its ordinance or adopt a resolution with specified findings.

(6) This bill would also prohibit a local agency from issuing a certificate of occupancy for an accessory dwelling unit before issuing a certificate of occupancy for the primary residence.

(7) This bill would require a local agency that has not adopted an ordinance for the creation of junior accessory dwelling units to apply the same standards established by this bill for local agencies with ordinances.

(8) This bill would make other conforming changes, including revising definitions and changes clarifying that the above-specified provisions regulating accessory dwelling units and junior accessory dwelling units also apply to the creation of accessory dwelling units and junior accessory dwelling units on proposed structures to be constructed.

(9) This bill would incorporate additional changes to Section 65852.2 of the Government Code proposed by AB 881 and SB 13 to be operative only if this bill and either or both AB 881 and SB 13 are enacted and this bill is enacted last.

(10) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

DIGEST KEY

Vote: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: YES

Assembly Bill No. 587
CHAPTER 657

An act to add Section 65852.26 to the Government Code, relating to land use.

[Approved by Governor October 09, 2019. Filed with Secretary of State October 09, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 587, Friedman. Accessory dwelling units: sale or separate conveyance.

The Planning and Zoning Law authorizes a local agency to provide, by ordinance, for the creation of accessory dwelling units in single-family and multifamily residential zones and requires a local agency that has not adopted an ordinance to ministerially approve an application for an accessory dwelling unit, and sets forth required ordinance standards, including that the ordinance prohibit the sale or conveyance of the accessory dwelling unit separately from the primary residence.

Existing property tax law establishes a welfare exemption under which property is exempt from taxation if the property is owned and operated by a nonprofit corporation that is organized and operated for the purpose of building and rehabilitating single-family or multifamily residences for sale, as provided, at cost to low-income families.

This bill would authorize a local agency to allow, by ordinance, an accessory dwelling unit that was created pursuant to the process described above to be sold or conveyed separately from the primary residence to a qualified buyer if certain conditions are met. Those conditions include, among others, that the property was built or developed by a qualified nonprofit corporation that is receiving the above-described welfare exemption, a recorded contract exists between the qualified buyer and the qualified nonprofit corporation that imposes an enforceable restriction upon the sale and conveyance of the property that ensures the property will be preserved for affordable housing, and that the property is held pursuant to a recorded tenancy in common agreement that includes specified provisions.

DIGEST KEY

Vote: MAJORITY Appropriation: NO Fiscal Committee: NO Local Program: NO

Assembly Bill No. 670
CHAPTER 178

An act to add Section 4751 to the Civil Code, relating to common interest developments.

[Approved by Governor August 30, 2019. Filed with Secretary of State August 30, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 670, Friedman. Common interest developments: accessory dwelling units.

The Planning and Zoning Law authorizes a local agency to provide for the creation of accessory dwelling units in single-family and multifamily residential zones by ordinance, and sets forth standards the ordinance is required to impose with respect to certain matters, including, among others, maximum unit size, parking, and height standards. Existing law authorizes a local agency to provide by ordinance for the creation of junior accessory dwelling units, as defined, in single-family residential zones and requires the ordinance to include, among other things, standards for the creation of a junior accessory dwelling unit, required deed restrictions, and occupancy requirements.

Existing law, the Davis-Stirling Common Interest Development Act, governs the management and operation of common interest developments. Existing law prohibits the governing document of a common interest development from prohibiting the rental or leasing of any separate interest in the common interest development, unless that governing document was effective prior to the date the owner acquired title to their separate interest.

This bill would make void and unenforceable any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the above-described minimum standards established for those units. However, the bill would permit reasonable restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct, an accessory dwelling unit or junior accessory dwelling unit consistent with those aforementioned minimum standards provisions.

DIGEST KEY

Vote: MAJORITY Appropriation: NO Fiscal Committee: NO Local Program: NO

Assembly Bill No. 671
CHAPTER 658

An act to amend Section 65583 of the Government Code, and to add Section 50504.5 to the Health and Safety Code, relating to land use.

[Approved by Governor October 09, 2019. Filed with Secretary of State October 09, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 671, Friedman. Accessory dwelling units: incentives.

The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. Existing law provides for various incentives intended to facilitate and expedite the construction of affordable housing. Existing law authorizes a local agency to provide, by ordinance, for the creation of accessory dwelling units in single-family and multifamily residential zones and sets forth standards the ordinance is required to impose on accessory dwelling units.

This bill would require a local agency to include a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent for very low, low-, or moderate-income households in its housing element. The bill would require the Department of Housing and Community Development to develop a list of existing state grants and financial incentives for operating, administrative, and other expenses in connection with the planning, construction, and operation of accessory dwelling units with affordable rent, as specified. The bill would require the department to post that list on its internet website by December 31, 2020.

By requiring a local agency to prepare an additional plan in the housing element, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would incorporate additional changes in Section 65583 of the Government Code proposed by AB 139, to be operative if this bill and AB 139 are enacted and become effective on or before January 1, 2020, and this bill is enacted last.

DIGEST KEY

Vote: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: YES

Assembly Bill No. 881
CHAPTER 659

An act to amend, repeal, and add Section 65852.2 of the Government Code, relating to housing.

[Approved by Governor October 09, 2019. Filed with Secretary of State October 09, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 881, Bloom. Accessory dwelling units.

(1) The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions. Existing law requires the ordinance to designate areas where accessory dwelling units may be permitted and authorizes the designated areas to be based on criteria that includes, but is not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

This bill would instead require a local agency to designate these areas based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. The bill would also prohibit a local agency from issuing a certificate of occupancy for an accessory dwelling unit before issuing a certificate of occupancy for the primary residence.

(2) Existing law requires an ordinance providing for the creation of accessory dwelling units, as described above, to impose standards on accessory dwelling units, including, among other things, lot coverage. Existing law also requires such an ordinance to require that the accessory dwelling units be either attached to, or located within, the living area of the proposed or existing primary dwelling, or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

This bill would delete the provision authorizing the imposition of standards on lot coverage and would prohibit an ordinance from imposing requirements on minimum lot size. The bill would revise the requirements for an accessory dwelling unit by providing that the accessory dwelling unit may be attached to, or located within, an attached garage, storage area, or an accessory structure, as defined.

(3) Existing law prohibits a local agency from requiring a setback for an existing garage that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit. Existing law requires that an accessory dwelling unit that is constructed above a garage have a setback of no more than 5 feet.

This bill would instead prohibit a setback requirement for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit. The bill would also instead require a setback of no more than 4 feet for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(4) Existing law provides that replacement offstreet parking spaces, required by a local agency when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, may be located in any configuration on the same lot as the accessory dwelling unit, except as provided.

This bill would instead prohibit a local agency from requiring the replacement of offstreet parking spaces when a garage, carport, or covered parking structure is demolished or converted, as described above.

(5) Existing law requires a local agency to ministerially approve or deny a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit within 120 days of receiving the application.

This bill would instead require a local agency to ministerially approve or deny a permit application for the creation of an accessory dwelling unit or junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. The bill would authorize the permitting agency to delay acting on the permit application if the permit application is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, as specified.

(6) Existing law prohibits a local agency from utilizing standards to evaluate a proposed accessory dwelling unit on a lot that is zoned for residential use that includes a proposed or existing single-family dwelling other than the criteria described above, except, among one other exception, a local agency may require an applicant for a permit to be an owner-occupant of either the primary or accessory dwelling unit as a condition of issuing a permit.

This bill, until January 1, 2025, would prohibit a local agency from imposing an owner-occupant requirement, as described above.

(7) Existing law authorizes a local agency to establish minimum and maximum unit size limitations on accessory dwelling units, provided that the ordinance permits an efficiency unit to be constructed in compliance with local development standards.

This bill would prohibit a local agency from establishing a minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit, as defined. The bill would also prohibit a local agency from establishing a maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than 850 square feet, and 1,000 square feet if the accessory dwelling unit contains more than one bedroom. The bill would also instead prohibit a local agency from establishing any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size for either attached or detached dwelling units that prohibits at least an 800 square foot accessory dwelling unit that is at least 16 feet in height and with a 4-foot side and rear yard setbacks.

(8) Existing law prohibits a local agency from imposing parking standards for an accessory dwelling unit if, among other conditions, the accessory dwelling unit is located within $\frac{1}{2}$ mile of public transit.

This bill would make that prohibition applicable if the accessory dwelling unit is located within $\frac{1}{2}$ mile walking distance of public transit, and would define public transit for those purposes.

(9) Existing law requires a local agency to ministerially approve an application for a building permit to create within a zone for single-family use one accessory dwelling unit per single family lot of the unit that is contained within the existing space of a single-family residence or accessory structure when specified conditions are met, including that the side and rear setbacks are sufficient for fire safety.

This bill would instead require ministerial approval of an application for a building permit within a residential or mixed-use zone to create the following: (1) one accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if certain requirements are met; (2) a detached, new construction accessory dwelling unit that meets certain requirements and would authorize a local agency to impose specified conditions relating to floor area and height on that

unit; (3) multiple accessory dwelling units within the portions of an existing multifamily dwelling structure provided those units meet certain requirements; or (4) not more than 2 accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to certain height and rear yard and side setback requirements.

(10) Existing law prohibits a local agency, special district, or water corporation from considering an accessory dwelling unit to be a new residential use for purposes of calculating fees or capacity charges.

This bill would establish an exception from the above-described prohibition in the case of an accessory dwelling unit that was constructed with a new single-family home.

(11) Existing law requires a local agency to submit a copy of the adopted ordinance to the Department of Housing and Community Development and authorizes the department to review and comment on the ordinance.

This bill would instead authorize the department to submit written findings to the local agency as to whether the ordinance complies with the statute authorizing the creation of an accessory dwelling unit, and, if the department finds that the local agency's ordinance does not comply with those provisions, would require the department to notify the local agency within a reasonable time. The bill would require the local agency to consider the department's findings and either amend its ordinance to comply with those provisions or adopt it without changes and include specified findings. If the local agency does not amend its ordinance or does not adopt those findings, the bill would require the department to notify the local agency and authorize it to notify the Attorney General that the local agency is in violation of state law, as provided. The bill would authorize the department to adopt guidelines to implement uniform standards or criteria to supplement or clarify the provisions authorizing accessory dwelling units.

(12) Existing law defines the term "accessory dwelling unit" for these purposes to mean an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons.

This bill would revise the definition to additionally require an accessory dwelling unit be located on a lot with a proposed or existing primary residence in order for the provisions described above to apply.

(13) This bill would incorporate additional changes to Section 65852.2 of the Government Code proposed by SB 13 to be operative only if this bill and SB 13 are enacted and this bill is enacted last.

(14) By increasing the duties of local agencies with respect to land use regulations, this bill would impose a state-mandated local program.

(15) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(16) This bill would include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

DIGEST KEY

Vote: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: YES