Planning Commission

AGENDA

REGULAR MEETING OF THE PLANNING COMMISSION

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Wednesday, October 7, 2020
7:00 PM

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the Planning Commission (PC) will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID19 virus, there will not be a physical meeting location available.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL https://zoom.us/j/94801457100. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the “raise hand” icon by rolling over the bottom of the screen.

To join by phone: Dial **1 669 900 6833** and enter Meeting ID: **948 0145 7100.** If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.

Please be mindful that the video conference and teleconference will be recorded. All rules of procedure and decorum that apply for in-person Planning Commission meetings apply for Planning Commission meetings conducted by teleconference or videoconference.

See “MEETING PROCEDURES” below.

All written materials identified on this agenda are available on the Planning Commission webpage:https://www.cityofberkeley.info/Clerk/Commissions/Commissions__Planning_Commission_Homepage.aspx

PRELIMINARY MATTERS

1. ***Roll Call:*** **Wiblin, Brad,** appointed by Councilmember Kesarwani, District 1
   Martinot, Steve, appointed by Councilmember Davila, District 2
   Schildt, Christine, appointed by Councilmember Bartlett, District 3
   Lacey, Mary Kay, Vice Chair, appointed by Councilmember Harrison, District 4
   Beach, Benjamin, appointed by Councilmember Hahn, District 5
   Kapla, Robb, Chair, appointed by Councilmember Wengraf, District 6

Krpata, **Shane,** appointed by Councilmember Robinson, District 7
Vincent, Jeff, appointed by Councilmember Droste, District 8
Wrenn, Rob, appointed by Mayor Arreguin

2. ***Order of Agenda:*** The Commission may rearrange the agenda or place items on the Consent Calendar.

3. ***Public Comment:*** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (S*ee "Public Testimony Guidelines" below):*

4. ***Planning Staff Report:*** In addition to the items below, additional matters may be reported at the meeting.

5. ***Chairperson's Report:*** Report by Planning Commission Chair.

6. ***Committee Reports:*** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.

7. ***Approval of Minutes***: Approval of Draft Minutes from the meeting on **September 30, 2020**.

8. ***Future Agenda Items and Other Planning-Related Events:***

AGENDA ITEMS: *All agenda items are for discussion and possible action. Public Hearing items require hearing prior to Commission action.*

9. ***Discussion:*** Business Support Zoning Amendment Referrals – *Amusement Device Arcades and Arts District Overlay Expansion*
   Recommendation: *Discuss and provide feedback on recommendations to address the Business Support Referrals*
   Written Materials: *Attached*
   Presentation: *N/A*

ADDITIONAL AGENDA ITEMS: In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting upon Commissioner request.

Information Items:

- ADU Technical Assistance Handbook – California Housing and Community Development

Communications:

- None.

Late Communications: (Received after the packet deadline):

- Supplemental Packet One – received by noon two days before the meeting
- Supplemental Packet Two – received by 5pm the day before the meeting
- Supplemental Packet Three – received after 5pm the day before the meeting

ADJOURNMENT

******** ***MEETING PROCEDURES*** ********

Public Testimony Guidelines:
All persons are welcome to attend the virtual meeting and will be given an opportunity to address the Commission. Speakers are customarily allotted up to three minutes each. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. Customarily, speakers are asked to address agenda items when the items are before the Commission rather than during the general public comment period. Speakers are encouraged to submit comments in writing. See "Procedures for Correspondence to the Commissioners" below.

Procedures for* Correspondence *to the Commissioners:
All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public meeting and/or in writing before the meeting. The Commission may limit the time granted to each speaker.

Written comments must be directed to the Planning Commission Secretary at the Land Use Planning Division (Attn: Planning Commission Secretary), 1947 Center Street, Second Floor, Berkeley CA 94704, or via e-mail to: **apearson@cityofberkeley.info**. All materials will be made available via the Planning Commission agenda page online at this address: https://www.cityofberkeley.info/PC/.

Correspondence received by **12 noon, nine days** before this public meeting, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by **12 noon two days** before this public meeting, will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication and emailed to Commissioners one day before the public meeting.

- Correspondence received by **5pm one day** before this public meeting, will be included in a second Supplemental Packet, which will be posted to the online agenda as a Late Communication and emailed to the Commissioners by 5pm on the day of the public meeting.

- Correspondence received **after 5pm one day** before this public meeting will be saved as part of the public record.

Note: It will not be possible to submit written comments at the meeting.

Communications are Public Records: Communications to Berkeley boards, commissions, or committees are public records and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and**

other contact information are not required, but if included in any communication to a City board, commission, or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service, or in person, to the Secretary of the relevant board, commission, or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the Secretary to the relevant board, commission, or committee for further information.

Communication Access: To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice), or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability.

Note: If you object to a project or to any City action or procedure relating to the project application, any lawsuit which you may later file may be limited to those issues raised by you or someone else in the public hearing on the project, or in written communication delivered at or prior to the public hearing. The time limit within which to commence any lawsuit or legal challenge related to these applications is governed by Section 1094.6, of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

Meeting Access: To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist, at 981-6418 (V) or 981-6347 (TDD), at least three (3) business days before the meeting date.

I hereby certify that the agenda for this regular meeting of the Planning Commission was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on **October 2, 2020**.

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Alene Pearson
Planning Commission Secretary

Planning Commission

DRAFT MINUTES OF THE SPECIAL PLANNING COMMISSION MEETING
September 30, 2020

The meeting was called to order at 7:02 p.m.

Location: Virtual meeting via Zoom

1. **ROLL CALL:**
   Commissioners Present: Benjamin Beach, Robb Kapla, Shane Krpata, Mary Kay Lacey, Steve Martinot, Christine Schildt, Jeff Vincent, Brad Wiblin, and Rob Wrenn.

   Commissioners Absent: None.

   Staff Present: Secretary Alene Pearson, Katrina Lapira, Alisa Shen, Jordan Klein, Steve Buckley, and Paola Boylan.

2. **ORDER OF AGENDA:** No changes.

3. **PUBLIC COMMENT PERIOD:** 0

4. **PLANNING STAFF REPORT:**

- None.

Information Items:

- None

Communications:

- September 21 – Staff, September 16 - Adeline Public Comment List
- September 19 – Thomas, Southside Plan
- September 18 – Berkeley Tenants Union, Adeline Corridor Plan
- September 18 – Berkeley Tenants Union, Social Housing
- September 14 – Collins, Adeline Corridor Plan
- September 17 – Selawsky, Adeline Corridor Plan
- September 17 – Goldmacher, Adeline Corridor Plan
- September 14 – Wrenn, Adeline Corridor Plan

Late Communications: *See agenda for links.*

- Supplemental Packet One
- Supplemental Packet Two
- Supplemental Packet Three

5. CHAIR REPORT:

- None

6. COMMITTEE REPORT: Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.

- None

7. APPROVAL OF MINUTES:

Motion/Second/Carried (Wiblin/Vincent) to approve the Planning Commission Meeting Minutes from September 16, 2020.

Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:

- None

AGENDA ITEMS

9. Action: ***Public Hearing: Continued DRAFT Adeline Corridor Plan***

After receiving public comment, the Planning Commission discussed various aspects of the Draft Adeline Corridor Plan that resulted in the following recommendations to City Council.

Public Comments: 29

Motion/Second/Carried (Kapla/Wrenn) to close the public hearing of the Draft Adeline Corridor Plan (8:46pm).

Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

Motion/Second/Carried (Wrenn/Wiblin) to recommend the adoption of the Mitigation and Monitoring Reporting Program (MMRP).

Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

Motion/Second/Carried (Wrenn/Wiblin) to recommend the adoption of Commissioner Schildt's revisions to staff's prepared language concerning Affordable Housing Requirements at the Ashby BART station. Added language is bolded and highlighted below-

Future development in the Ashby BART subarea shall consist of well-designed, high-quality, transit-oriented development that maximizes the total number of deed-restricted affordable homes, serving a range of income levels (e.g. Extremely Low, Very Low, Low and Moderate) and could also include supportive services or other spaces associated with the affordable housing and other desired community benefits. The opportunity to leverage public land for a mix of uses, including significant amounts of affordable housing, will help to safeguard the socio-economic and cultural diversity treasured by the community, as well as have correlated benefits of contributing to the neighborhood's economic prosperity and improving health outcomes.

The City and BART should strive for a goal of 100% deed-restricted affordable housing**, prioritizing extremely low and very low affordable housing,** that could be accomplished through multiple phases of development. The amount of housing and levels of affordability shall be determined through the process outlined in the Memorandum of Understanding (MOU) unanimously adopted by the City Council and the BART Board of Directors (Dec. 2019 and Jan. 2020, respectively) to work together to develop the Ashby BART and North Berkeley BART station areas. This process will **involve community meetings, development of an affordable housing funding plan** and additional land use and economic feasibility studies, including analysis of 100% affordable housing, to inform further conversation with the Community Advisory Group (CAG), Planning Commission and broader community (see Objective 7).

Ayes: Beach, Kapla, Krpata, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes: Lacey Abstain: None. Absent: None. (8-1-0-0)

Motion/Second/Carried (Wrenn/Schildt) to recommend the adoption of the following actions that authorizes staff to –

- Make non-substantive, technical conforming edits (e.g. correction of typographical errors and/or clerical errors) to the ACSP, including but not limited to page, figure or table numbering, or zoning regulations in the Municipal Code that may have been overlooked in deleting old sections and cross-referencing new sections of the proposed Adeline Corridor zoning district prior to formal publication of the amendments in the Berkeley Municipal Code, and to return to the Planning Commission for major revisions only; and

- Create updated versions of the ACSP Implementation Plan (Chapter 8, Table 8.1) as part of the annual progress report on implementation actions to reflect prevailing changes in laws, economic conditions, and the availability of City and other funding sources, which could potentially affect timeframes, responsibilities and potential funding mechanisms.

Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

Motion/Second/Carried (Wrenn/Wiblin) to recommend that residential parking requirements established are consistent with citywide requirements in the parking reform package that City Council will be considering this fall.

Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

Motion/Second/Carried (Schildt/Wrenn) to maintain the prohibition on sales of distilled alcoholic beverages along Adeline Street, south of Ashby Avenue.

Ayes: Beach, Kapla, Lacey, Schildt, Vincent, Wrenn, and Wiblin. Noes: Krpata. Abstain: None. Absent: Martinot. (7-1-0-1)

Motion/Second/Carried (Schildt/Wrenn) to adopt Adeline Corridor Subcommittee's Companion Recommendations, as follows -

1. Set-aside at least an initial allocation of $50 million of local funds for affordable housing (e.g. Measure O, Measure U1, Measure P, Housing Trust Fund) for the Adeline Corridor, and in particular, for the Ashby BART subarea. In addition to this initial set aside, the City Council should also identify potential funding sources and take action to provide additional funds that can be used to create additional affordable housing over the life of the Adeline Corridor Plan.

2. Give careful consideration to revising the Affordable Housing Mitigation Fee Ordinance to allow Moderate Income units to count towards the required percentage of affordable housing if it is provided as a combination of Moderate Income (at 100% of Area Median Income) and Extremely Low Income units to the extent permitted by law;

3. Consider support and funding for environmental analysis of a two-lane street right-of-way design option for Adeline Avenue, which would reduce travel lanes to one lane in each direction. Such a design could, by shrinking the amount of space provided to motor vehicles, potentially improve pedestrian safety and could provide more space for the development of public open space and affordable housing along the corridor. Environmental analysis of a two-lane option should look at the impact such a design would have on the City's Designated Truck Routes and Emergency Access & Evacuation Routes, on the operation of buses on the corridor, and on traffic, including possible traffic spillover onto Martin Luther King or other area streets; and

4. Identify and pursue funding for the development, operation and maintenance of parks for the Adeline Corridor.

5. Recommend that the City Council refer to the Planning Commission zoning map amendments to rezone the Fred Finch site (3404 King Street) and parcel owned by Ephesians Church (1708 Harmon Street) to the Commercial - Adeline Corridor District.

Ayes: Beach, Kapla, Krpata, Lacey, Schildt, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: Martinot. Absent: None. (8-0-1-0)

Motion/Second/Carried (Wrenn/Schildt) to recommend that the City Council adopt the ACSP (as revised), General Plan and Municipal Code and map amendments in the September 30, 2020 Staff Report Attachments A, B and C) and the Adeline Corridor Subcommittee's recommendation for lot coverage.

Ayes: Beach, Kapla, Lacey, Schildt, Wrenn, and Wiblin. Noes: Martinot. Abstain: Krpata and Vincent. Absent: None. (6-1-2-0)

Members in the public in attendance: 67
Public Speakers: 29 speakers
Length of the meeting: 4 hours and 49 minutes

Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: October 7, 2020

TO: Members of the Planning Commission

FROM: Paola Boylan, Assistant Planner
Katrina Lapira, Assistant Planner

SUBJECT: Business Support Zoning Amendment Referrals – Amusement Device Arcades and Arts District Overlay Expansion

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RECOMMENDATION

Staff recommends that the Planning Commission discuss proposed modifications, provide feedback, and request staff draft Zoning Ordinance amendments for Planning Commission consideration.

BACKGROUND

City Council has referred to the Planning Commission five referrals that support Berkeley businesses and bolster Berkeley's commercial districts. These referrals range in scope from broad suggestions to targeted requests, but share the common goal of expediting service expansion for existing businesses and reducing barriers to entry for new businesses. This report analyzes and provides recommendations for two referrals:

1. **Zoning Ordinance Modification for Elmwood Commercial Districts (Councilmember Droste, 6/25/19)**

2. **Expanding the Downtown Arts District (Mayor Bates, 10/18/16)**

DISCUSSION

The overarching goal of these referrals is to provide the flexibility needed by businesses to adapt to a changing marketplace. This section provides an overview of each referral item addressed, existing conditions, staff's analysis, and proposed modifications and recommendations for discussion.

Amusement Device Arcades

The Berkeley Municipal Code (BMC) currently prohibits Amusement Device Arcades[1] (Arcades) in the Elmwood Commercial district (C-E district). In June of 2019, City Council referred to the Planning Commission consideration of levels of discretion for Arcades in the C-E district, recommending that they be re-examined and relaxed (See Link 1). **Table 1** shows the permit specifications and thresholds recommended for the C-E district by the referral.

Table 1: Permit Threshold Suggested for Arcades by the Referral for the Elmwood Commercial District

Size Threshold (square feet)	Permit Required[2]
Under 3,000	ZC
Over 3,000	AUP

For a more comprehensive review of this referral, staff reviewed proposed thresholds and existing permit requirements for Arcades throughout all commercial and manufacturing districts in Berkeley. Findings, proposed modifications, and rationale are presented below.

1. **Arcades as Commercial Recreation Centers[3]**

   - **Remove Arcades from Uses Permitted Tables and instead recognize and regulate the Use as a Commercial Recreation Center.** *(Modify Uses Permitted Tables in zones C-1, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-DMU, and MU-R Districts)*

     Rationale: As retail continues to shift towards online platforms, business models are evolving to provide activity-based experiences that attract customers. Commercial Recreation Centers (CRC) are non-theater establishments, where recreation facilities are offered or amusement devices are provided as a principal commercial activity. Providing clear guidance on establishing such businesses is one way the City has supported emerging

[1] **Amusement Device:** Any machine or device which may be operated for use as a game, contest or amusement upon the insertion of a coin, slug or token in any slot or receptacle attached to such machine or connected therewith, which does not contain a payoff device for the return of slugs, money, coins, checks, tokens or merchandise.

Amusement Device Arcade: An establishment which contains six (6) or more Amusement Devices. An Amusement Device Arcade is a Commercial Recreation Center irrespective of whether such machines are the principal commercial activity of an establishment.

[2] **ZC –** Zoning Certificate | **AUP –** Administrative Use Permit | **UP(PH) –** Use Permit (Public Hearing)

[3] **Commercial Recreation Center:** Any establishment other than a theater at which recreation facilities are offered or amusement devices provided to the public as a principal commercial activity of such establishment. This may include, but is not limited to, bingo parlors, bowling alleys, skating rinks, billiard or pool halls, miniature golf courses and amusement device arcades.

business models. In 2018, City Council adopted updated regulations that set thoroughly researched and studied thresholds for CRCs. Updates provided a simpler permitting process to CRCs by establishing a tiered permitting structure that requires lower levels of discretion for smaller businesses, thereby reducing start-up costs and shortening permitting timelines. **Tables 2 and 3** show the distinct thresholds established per General Plan designation, which coincide with various zoning districts according to purpose and intensity.

Table 2: Avenue Commercial Permit Threshold for CRCs

Size Threshold (square feet)	Permit Required
Under 5,000	ZC
5,000 - 10,000	AUP
Over 10,000	UP(PH)

*Outdoor uses require UP(PH)

Table 3: Neighborhood Commercial Permit Threshold for CRCs

Size Threshold (square feet)	Permit Required
Under 3,000	AUP
Over 3,000	UP(PH)

*Outdoor uses require UP(PH)

In contrast to the rational permitting delineated for CRCs in the tables above, Arcades are defined by the BMC as a type of CRC, yet they are regulated separately—in some districts they are prohibited, in others they require a UP(PH) regardless of the proposed establishment's square footage. The defined terms for these two categories overlap significantly and reference each other. CRC regulations provide the flexibility requested in this referral, while continuing to provide safeguards for the surrounding community. In addition, CRC regulations provide a clear path to establishing businesses that offer activity based experiences. Staff's proposed modifications would extend the same path to Arcades. Therefore, staff recommends recognizing and regulating Arcades as CRCs.

- **Remove Special Provisions preventing Amusement Device Arcades from locating within a radius of 600 feet of any primary or secondary school.** *(BMC Section 23E.16.050)*

  Rationale: Special Provisions[4] were set in place in the 1990s to prevent Amusement Device Arcades from establishing too close to primary and

[4]**Special Provisions -** No Amusement Device Arcade shall be established within a radius of six hundred (600) feet of any primary or secondary school. This applies to all districts and permits.

secondary schools. However, in the 21st century, the advancement of technology has brought gaming opportunities to people's households and fingertips through computers, gaming consoles, and cell phones among other devices. The City of Berkeley is among one of two cities with this restriction, and of the two, it is twice as strict by requiring a 600 ft. radius versus 300 ft. (City of San Diego) (See Attachment 3). Removing this requirement is not of concern to the Berkeley Police Department and will provide a smooth transition to recognizing Arcades as CRCs.

2. **Amusement Devices Incidental to a Permitted Use**
   - **Change the maximum number of Amusement Devices allowed as an incidental use to a permitted use from three to five**. *(Modify Uses Permitted Tables in zones C-1,C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-DMU, MU-LI, and MU-R Districts)*

     Rationale: Current regulations allow up-to three Amusement Devices incidental to an established use with either an AUP or a UP(PH), depending on the district. At the same time, Arcades are defined as establishments with six or more Amusement Devices - creating an arbitrary gap between the two use types. Therefore, staff recommends allowing up to five Amusement Devices as an incidental use to a permitted use, which would provide consistency throughout the Zoning Ordinance and set a threshold similar to our neighboring City of Albany (See Attachment 3).

   - **Revise the level of discretion for Amusement Devices as an incidental use to a permitted use from an Administrative Use Permit (AUP) to a Zoning Certificate (ZC).** *(Modify Uses Permitted Tables in zones C-1, C-T, C-W, C-DMU, MU-LI, and MU-R Districts)*

     (See discussion below)

   - **Revise the level of discretion for Amusement Devices as an incidental use to a permitted use from a Use Permit Public Hearing (UP(PH)) to a Zoning Certificate (ZC).** *(Modify Uses Permitted Tables in zones C-N, C-E, C-NS, C-SA, and C-SO Districts)*

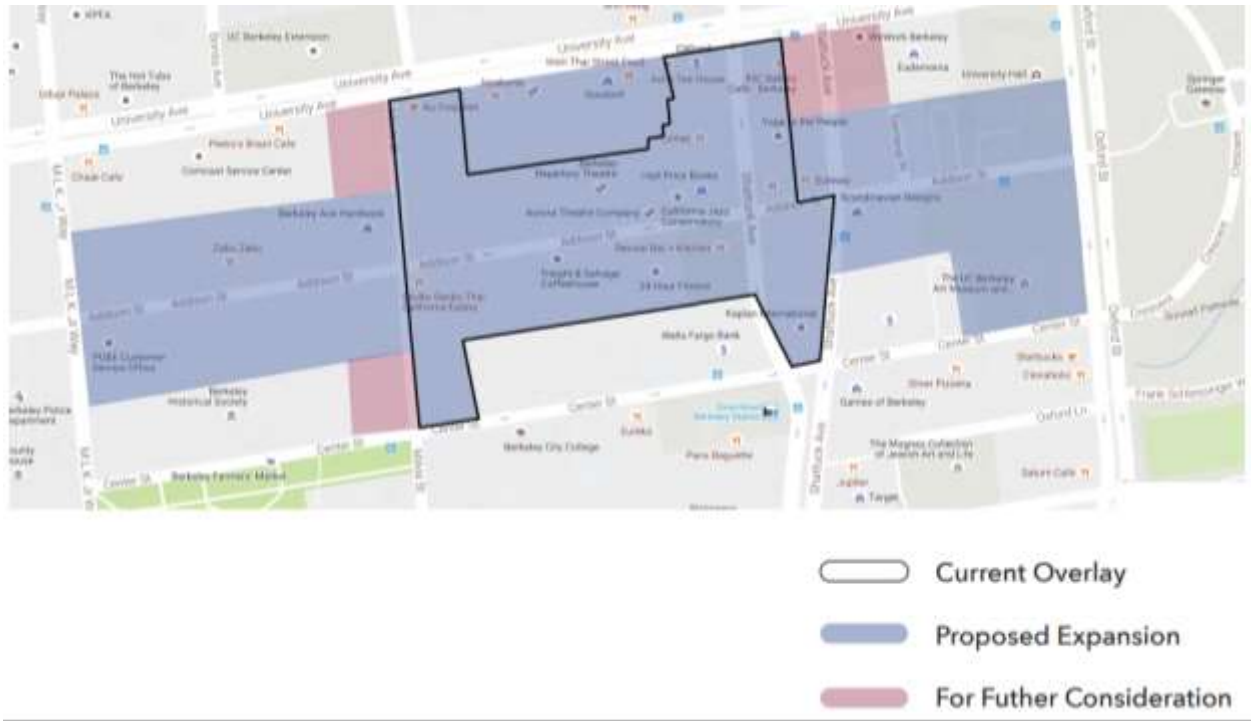
     Rationale: Current regulations require businesses in Berkeley to obtain an AUP or UP(PH), depending on the district, to add a limited number of Amusement Devices as an incidental use. In a time when emerging business models focus on creating activity-based experiences for customers, Amusement Devices can provide an attractive service to patrons. The proposed modification would lower levels of discretion for up to five devices to a ZC, bringing Berkeley into alignment with other cities in order to retain and attract existing and new businesses (See Attachment 3).

Downtown Arts District Overlay

Established in 2000, the purpose of the Downtown Arts District Overlay (ADO) is to create a core of cultural activities, retail, and other commercial uses that generate pedestrian

vitality in the downtown to encourage a broader economic revitalization of the area. Since that time, several theater arts, fine dining, and related uses have become established or expanded in the area. In 2016, City Council asked the Planning Commission to explore expanding the existing physical boundaries of the ADO to include all buildings with street frontage along Addison Street from Martin Luther King (MLK) Way through Oxford Street and portions along University Avenue, Shattuck Avenue, and Center Street (See Link 2 and **Figure 1**).

Figure 1. Arts District Overlay



Source: Expanding the Downtown Arts District (Mayor Bates, 10/18/16)

Staff reviewed the overlay boundaries and allowable uses to propose recommendations that meet the purposes of the ADO and the underlying zoning districts. Findings, recommendations, and rationale are presented below.

1. **Maintain the existing boundaries of the ADO.**

   Rationale: Staff's proposal to maintain the existing boundaries takes into consideration the role of the ADO as a development tool, the pattern of existing uses, and development constraints in the areas within the referral's proposed expanded boundary.

   The Downtown Mixed-Use (C-DMU) District underlies the ADO. The primary zoning distinction between the C-DMU and the ADO is the regulation placed on ground floor uses. Currently, the ADO requires an AUP for ground floor office uses and Food Service Establishments focused on offsite consumption. The C-DMU requires a ZC for these same uses. The proposed expansion would incorporate more of the C-DMU, and given the existing provisions, would create legally non-

conforming uses in existing ground floor spaces with office uses and take-out only Food Service Establishments.

Expansion from Milvia Street to MLK Way - The area along Addison Street, from Milvia Street to MLK Way, is primarily built out, with new mixed-use developments and existing office buildings that support small residential and food service uses. Along this stretch, about 50% of the ground floor street frontage is dedicated office space. Under the ground floor restrictions of the ADO, these office spaces would be subject to AUP requirements if a new tenant were to require a change in use to the previously described food service or office use. Given the limitations of existing spaces, this proposal may create an unnecessary burden.

Expansion from Shattuck to Oxford and along University Avenue - The referral's proposed boundary expansion includes new cultural institutions like the UC Theatre Music Hall and the Berkeley Arts Museum and Pacific Film Archive (BAMPFA). However, a number of parcels along Addison Street, from Shattuck to Oxford Street, are owned by the University of California (UC) and are thus not subject to the City's zoning regulations. In addition, the referral's proposed expanded area includes several historic landmarks that already require additional review as part of the development process, shown in the figure below in orange. Added ground floor requirements imposed by the ADO could further complicate and deter the redevelopment of these historical lots. For these reasons, expanding the ADO to include this stretch of University Avenue and Addison Street would be ineffective in guiding development in this area.

Figure 2. Addison Street - UC Owned Parcels and Historic Landmarks

2. **Remove the provision requiring an Administrative Use Permit (AUP) for Food Service Establishments that primarily provide food for offsite consumption in the Downtown Arts District Overlay** *(Modify BMC Sections 23E.68.030 and 23E.68.040)*

   Rationale: Food Service Establishments in the C-DMU are regulated by a tiered permitting system based on gross square footage. As previously mentioned, the ADO places additional restrictions on Food Service Establishments. These restrictions could create barriers to prospective businesses and are also incompatible with the model under which current businesses are operating, as a result of the COVID-19 pandemic. Restaurants have shifted towards take-away models to keep afloat during the public health crisis, regardless of whether their previous primary focus was to be a sit-down or take-away establishment. Removing the additional restriction and treating all Food Service Establishments consistently throughout the C-DMU accommodates the ever-changing nature of the food service industry and simplifies the review process for prospective businesses.[5]

3. **Explore programmatic incentives adopted by other cities to encourage more art- and culture-focused establishments to locate within the existing ADO.**

   Rationale: There is little distinction between provisions in the ADO and the C-DMU in the Zoning Ordinance. To encourage the location of cultural institutions and supportive services within the ADO, a variety of programmatic incentives could be explored for adoption in the future. The City of Oakland published a report that outlines strategies used by other jurisdictions across the country to strengthen arts and cultural districts. Land Use Planning staff will share this report with Berkeley's Office of Economic Development and will support efforts to bolster the ADO through these types of strategies in the future (See Link 3).

NEXT STEPS

Based on the Planning Commission's feedback, staff will draft Zoning Ordinance amendments for Planning Commission's consideration.

ATTACHMENTS

1. Planning Commission Staff Report (without attachments) - July 1, 2020
2. Planning Commission Meeting Minutes - July 1, 2020
3. Matrix of Arcade Regulations

LINKS

[5] In 2018, the zoning ordinance was amended and largely removed the distinction among food service uses. This regulation is anomalous.

1. Zoning Ordinance Modification for Elmwood Commercial Districts (Councilmember Droste, 6/25/19) - https://www.cityofberkeley.info/Clerk/City_Council/2019/06_June/Documents/2019-06- 25_Item_37_Zoning_Ordinance_Modification.aspx

2. Expanding the Downtown Arts District (Mayor Bates, 10/18/16) - https://www.cityofberkeley.info/Clerk/City_Council/2016/10_Oct/Documents/2016-10- 18_Item_24_Expanding_the_Downtown_Arts.aspx

3. City of Oakland - Arts and Culture Research Compilation (2017) - https://cao-94612.s3.amazonaws.com/documents/Art-Culture-Best-Practices-and-Case-Studies-March-2017.pdf

Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: July 1, 2020

TO: Members of the Planning Commission

FROM: Paola Boylan, Assistant Planner
Alene Pearson, Principal Planner

SUBJECT: Referrals Supporting Berkeley Businesses

BACKGROUND

City Council has referred Planning Commission a set of five items that support Berkeley businesses and bolster Berkeley's commercial districts and commercial businesses. Referrals range in scope from broad suggestions to targeted requests but share the common goal of expediting service expansion for existing businesses and reducing barriers to entry for new businesses.

In light of current events, the importance of addressing business needs is a high priority as "shelter-in-place" [1] orders have significantly impacted and strained local businesses. The City has responded by adopting urgency ordinances to address acute needs of businesses. Addressing referrals in this report has the potential to compliment those efforts by supporting the short and long-term health of the business community.

The five business referrals presented in this report include the following:

1. Expanding the Downtown Arts District (Mayor Bates, 10/18/16)
2. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager William-Ridley, 12/4/18)
3. Zoning Ordinance Modification for Elmwood Commercial Districts (Councilmember Droste et al., 6/25/19)
4. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager William-Ridley, 10/15/19)
5. Referral: Update the Definition of "Research and Development" (Mayor Arreguin et al., 3/10/20)

[1] Shelter-in-place - an official order, issued during an emergency that directs people to stay in the indoor place or building that they already occupy and not to leave unless absolutely necessary.

The overarching goal of these referrals is to provide flexibility to businesses that are trying to adapt to a changing market. An overview of each referral is provided below.

1. **Expanding the Downtown Arts District (Mayor Bates, 10/18/16) -** The purpose of the Downtown Arts District Overlay (ADO) is to create a core of cultural activities, retail, and commercial uses that generate pedestrian vitality in the downtown to encourage a broader economic revitalization of the area. Allowable uses in the ADO focus on pedestrian oriented ground-floor uses such as food uses with seating, art galleries, bookstores, and other culturally compatible uses, while prohibiting carry out and office uses. This referral requests expansion of the ADO boundaries as well as increased flexibility in allowable ground-floor uses.

   Staff proposes to review both overlay boundaries and allowable uses in order to bring a set of amendments forward that meet the purposes of the ADO and the underlying zoning districts.

2. **Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager, 12/4/18) -** As part of the Small Business Support Package that was adopted in December of 2018, City Council reduced level of discretion for restaurants in commercial districts serving beer and wine incidental to seated food service. This referral requests these same regulations be extended to beer and wine service at restaurants in the manufacturing districts.

   Staff proposes to review existing regulations in each of the manufacturing districts in order to bring a set of amendments forward that provides flexibility to restaurants and meets the purposes of West Berkeley Plan.

3. **Zoning Ordinance Modification for Elmwood Commercial Districts (Councilmember Droste, 6/25/19) -** The BMC currently prohibits Amusement Device Arcades in the Elmwood Commercial District (C-E district). This referral requests levels of discretion for arcades in the C-E district be re-examined and relaxed.

   For a more comprehensive review of this referral, staff proposes to review existing levels of discretion for Amusement Device Arcades throughout all commercial districts and develop a set of amendments that are flexible and consistent with local regulations and State laws.

4. **Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager, 10/15/19)** - Early in 2019, the Office of Economic Development (OED) conducted outreach to gain a better understanding of challenges and concerns facing small business. These conversations led the OED to recommend to City Council a second set of supports for small businesses. This referral presents OED's eight recommendations for consideration and discussion:

   a. **Permit group instruction with a Zoning Certificate (ZC) in commercial districts.** Currently most commercial districts permit group instruction with an Administrative Use Permit (AUP).

Staff proposes to review existing regulations to bring a set of amendments forward that consider flexibility needed for experience-based business uses.

b. **Clarify design review and guidelines for signs in commercial districts** – The approval process and requirements for obtaining sign permits in commercial districts can be updated to improve clarity for applicants and consistency between projects and within districts.

   Staff proposes to review the Sign Ordinance and Zoning Ordinance to develop language that clarifies processes for obtaining a permit for new and existing signs. This will also include exploring opportunities to further codify existing processes.

c. **Permit the sale of Distilled Spirits that are incidental to food service with and AUP subject to performance standards -** Presently an operator of a Food Service Establishment must obtain a Use Permit with a Public Hearing (UP(PH)) to serve Distilled Spirits. The review process is separate from and in addition to the review process an owner or operator is subject to by Alcohol Beverage Control – a state agency.

   Staff proposes reviewing existing permit requirements in commercial districts and developing a set of amendments to address any duplicative regulations.

d. **Permit standalone beer and wine sales with ZC subject to performance standards -** Currently, tap rooms, wine bars, and tasting rooms are subject to a UP(PH) process in most commercial districts.

   Staff proposes reviewing existing permit requirements for standalone beer and wine sales in the commercial districts and per ABC licensing to identify opportunities and constraints of changing existing levels of discretion.

e. **Review the limitation on "Hours of Operation" in commercial districts -** In order for a business to extend Hours of Operation a UP(PH) is required.

   Staff proposes to examine existing Hours of Operation for all commercial districts to identify opportunities for modifications.

f. **Review "Change of Use" requirements in commercial districts triggered by square footage -** Currently in some commercial districts, a change of use above a certain square footage threshold requires an AUP or UP(PH).

   Staff proposes to examine permit requirements for change of use in commercial districts, assess the need for these thresholds, and develop amendments for potential changes.

g. **Review levels of discretion for "Amusement Device Arcades" and "Automatic Teller Machines" (ATMs) in commercial districts -** Currently Amusement Device Arcades are prohibited or require a UP(PH) to operate. ATMs also typically require an AUP or UP(PH), and in some districts, are prohibited unless part of a Financial Institution.

Staff proposes to review requirements for Amusement Device Arcades, Amusement Devices as an incidental use, and ATMs in all commercial districts to and develop a set of amendments that are flexible and consistent with local regulations and State laws

h. **Update the Special Use Standards in Section 23E.16.040 for Alcoholic Beverage Sales and 23E.16.050 Amusement Arcades to reflect the potential changes to the Zoning Ordinance –** based on some of the ideas presented above, Special Use Standards may need updating.

Staff will identify all sections of the Zoning Ordinance needing updates to reflect the changes recommended by Planning Commission in this referral package.

5. **Referral: Update the Definition of "Research and Development" (Mayor Arreguin, 3/10/20) -** Research and Development (R&D) has evolved to take on many new forms that are not included today's definition. New technology allows R&D to be conducted in spaces that may, at first glance, appear to be an office or light industrial environment rather than a traditional "laboratory" with, for example, benches and sinks. This referral requests the definition of "Research and Development"[2] be updated to reflect evolving business practices.

Staff proposes to review the existing definition, evaluate language suggested in the referral, and draft language that reflects the uses in R&D facilities.

DISCUSSION

Over the next couple of months, Planning Commission will be asked to review and consider proposed Zoning Ordinance amendments that address the five City Council referrals presented above. This section provides an overview of staff's recommended approach and questions for Planning Commission to consider and discuss.

Analysis Approach

Staff reviewed the five referrals, outlined research questions and identified a pattern with which to group requested amendments:

[2] BMC — 23F.04.010 Definitions

1. Activity Based Experiences
2. Allowable Uses
3. Alcohol Service
4. Sign Ordinance Updates

The sections below provide a detailed overview of rationale for grouping amendments and lists research questions. Planning Commission is asked to consider the following questions and provide staff with feedback on additional questions that need to be asked or modifications that should be made.

1. Activity Based Experiences

Reasoning: Emerging business models focus on creating activity-based experiences for customers. Research questions in this category examine the potential benefits of lowering level of discretion for businesses that seek to offer activity-based experiences. Addressing questions for group instructions and arcades under the same category, will allow a broader understanding of how modifications to the BMC can provide flexibility for such businesses to exist and thrive in Berkeley.

Research Questions:

- *Group Classes* - What are the permit requirements for group classes in commercial and manufacturing districts? What are the permit requirements for serving food or beer and wine for group classes in commercial and manufacturing districts?

- *Arcades* - What are the permit requirements for arcades in commercial and manufacturing districts? What are the Special Use Standards for Arcades?

2. Allowable Uses

Reasoning: Research questions in this category explore where opportunities exist to facilitate activity that fosters a thriving district and enables businesses to expand their roots in Berkeley. Questions in this category have the potential to highlight simple modification that can bolster business activity throughout the City.

Research Questions:

- *Change of Use Thresholds* – What are the existing thresholds and permit requirements for a change of use in commercial districts? Is there a need for square footage to serve as an indicator permit type?

- *Expanding Hours of Operation* – What are the existing regulations in commercial districts? What is the rationale for these regulations and are there opportunities for modifications across some or all commercial districts?

- *Standalone Automatic Teller Machines (ATM)* – What are the regulations for standalone ATMs in commercial districts? What are the implications of lowering levels of discretion?

- *Defining Research & Development* – What are the limitations of the existing definition and the functional needs of R&D facilities?

- *Expanding the Downtown Arts District Overlay* – What are the existing uses and activity types along the current boundaries of the Downtown ADO? What additional ground-floor uses would complement the services of existing businesses in the Downtown ADO?

3. Alcohol Service

Reasoning: The Alcohol Beverage Control (ABC) is a state agency that regulates the sale, service, and production of alcohol. Businesses wishing to provide services involving alcohol must obtain a license by the state agency. In order to receive an ABC license, the business must first meet a set of standards enforced and regulated by the ABC, which are depended on license type[3]. Questions presented in this category help identify areas where there's duplication within BMC and ABC regulations. Additionally, it enables a focused conversation on the limitations placed on local flexibility by State regulations. By conducting the review and analysis of this subject matter under one category, there can be a deliberate effort to find the balance between supporting emerging business ideas, while addressing a common concern—a safe community.

Research Questions:

- *Distilled Spirits as incidental to food service* – What are the permit requirements for such use? What are the ABC requirements to obtain a license for such use? What opportunities and constrains exist to lower levels of discretion?

- *Standalone Beer & Wine Sales* – What are the permit requirements for such use? What are the ABC requirements to obtain a license for such use? What opportunities and constrains exist to lower levels of discretion?

- *Updates to Special Use Standards* – What are the Special Use Standards for Alcoholic Beverages? If modifications to Uses are proposed, what updates will be necessary for Special Use Standards to maintain consistency in the BMC?

- *Beer and Wine as incidental to a food service in the manufacturing districts* – What are the permit requirements to serve beer and wine incidental to food service in the manufacturing districts? Examine the purpose of manufacturing and rationale for beer and wine sales in these districts. What opportunities and constrains exist to lower levels of discretion?

[3] ABC License Types - https://www.abc.ca.gov/licensing/license-types/

4. Sign Ordinance Updates

Reasoning: The Sign Ordinance can be found in BMC Title 20. Planning Commission does not have purview over this Title; however, Zoning Adjustment Board and Design Review Committee must review signs in the context of development projects. The requested updates are already being considered by design staff and will be shared with the Design Review Committee for feedback. For this reason. Staff has put this referral request into a separate category. If appropriate, staff can share these edits with Planning Commission, but these updates will most likely move forward on a different schedule than those presented above.

Research Questions:

- *Design Review Thresholds* – What are the design review requirements for new or modified signs? What are the design review requirements for replacement signs? Is there an opportunity to clarify the design review process and applicability for signs in the BMC?

- *Master Sign Program* – What existing sign processes can be codified in the BMC through a Master Sign Program?

- *Design Review Guidelines (DRG)* – How do DRGs work with the BMC and when are they applicable?

Planning Commission Questions:

- *Does the grouping of these questions and considerations reflect an intuitive workflow?*

- *Will the proposed research provide ample information for Planning Commission to consider amendments that address referral requests?*

- *Are there any additional questions or considerations staff should research?*

NEXT STEPS

Based on Planning Commission's feedback, staff will draft Zoning Ordinance amendments and set a public hearing to consider items presented and formulate recommendations for City Council.

Links:

Expanding the Downtown Arts District (Mayor Bates, 10/18/16):
https://www.cityofberkeley.info/Clerk/City_Council/2016/10_Oct/Documents/2016-10-18_Item_24_Expanding_the_Downtown_Arts.aspx

Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager, 12/4/18):
https://www.cityofberkeley.info/Clerk/City_Council/2018/12_Dec/Documents/2018-12-4_Item_C__Modifications_to_the_Zoning_Ordinance_to_Support_Small_Businesses.aspx

Zoning Ordinance Modification for Elmwood Commercial Districts (Councilmember Droste, 6/25/19):
https://www.cityofberkeley.info/Clerk/City_Council/2019/06_June/Documents/2019-06-25_Item_37_Zoning_Ordinance_Modification.aspx

Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager, 10/15/19):
https://www.cityofberkeley.info/Clerk/City_Council/2019/10_Oct/Documents/2019-10-15_Item_34_Referral_Response_Modifications.aspx

Referral: Update the Definition of "Research and Development" (Mayor Arreguin, 3/10/20):
https://www.cityofberkeley.info/Clerk/City_Council/2020/03_Mar/Documents/2020-03-10_Item_17_Referral_Update_the_definition.aspx

Planning Commission

DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING
July 1, 2020

The meeting was called to order at 7:00 p.m

Location: Virtual meeting via Zoom

1. **ROLL CALL:**
   Commissioners Present: Benjamin Beach, Robb Kapla, Shane Krpata, Mary Kay Lacey, Steve Martinot, Jeff Vincent, Brad Wiblin, and Rob Wrenn.

   Commissioners Absent: Christine Schildt.

   Staff Present: Secretary Alene Pearson, Katrina Lapira, Paola Boylan, and Jordan Klein.

2. **ORDER OF AGENDA:** No changes.

3. **PUBLIC COMMENT PERIOD:** 0

4. **PLANNING STAFF REPORT:**

- Planning Department staff changes:
  - Department director, Timothy Burroughs, to step down and become Deputy Executive Director of Stop Waste
  - Introduction of Jordan Klein, Manager of the Office of Economic Development, who has been appointed the Interim Director of the Planning Department

Information Items:

- April 28 - City Council Item 8 – Eight Previous Referrals (No attachments)

Communications:

- April 23 – Planning Staff, Commission Meeting Update
- May 21 – Locke – Paddon + Drost, ADU and JADU Regulations
- May 29 – Planning Staff, Commission Meeting Update
- June 12 – Tyler Street Residents, Short Term Rental Regulations

Late Communications (Received after the Packet deadline):

- June 28 – Standard Fare, Small Business Support
- June 29 – AC Transit, AC Transit Survey
- June 29 – People's Park Historic Advocacy Group, People's Park

Late Communications (Received and distributed at the meeting):

- April 10 – City Clerk, Council Redistricting Process
- June 28 – Clarke, Home Occupations
- July 1 – Porter, ADUs in the Hillside
- July 1 – Staff, Item 9 Presentation
- July 1 – Staff, Item 10 Presentation

5. CHAIR REPORT:

- Meeting adjournment request: In honor of Margy Wilkinson, a life-long organizer for social, economic and racial justice

6. COMMITTEE REPORT: Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.

- ZORP Subcommittee: Commissioner Martinot summarized a memo he sent to the ZORP subcommittee on land use permits, levels of discretionary review, and community input (i.e. Zoning Certificates, Administrative Use permits, and Use Permits).

7. APPROVAL OF MINUTES:

Motion/Second/Carried (Kapla/Wiblin) to approve the Planning Commission Meeting Minutes from March 4, 2020 with the discussed edits to line 86-87. Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None. Absent: Schildt. (8-0-0-1)

Staff to review recording

FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:

- July 6 – Disaster, Fire, and Safety Commission meeting (ADU Ordinance presentation focused on public safety in Fire Zones 2 & 3)
- July 7 – ZORP Subcommittee meeting (Review of the Baseline Zoning Ordinance)
- July 15 – Adeline Subcommittee meeting
- July 28 – City Council meeting (Public Hearing on Rose Garden Inn Redesignation and Re-Zone)
- August 3 – BART CAG meeting #2
- August 5 – Special Planning Commission meeting
  - ZORP Baseline Zoning Ordinance
  - Southside EIR Scoping Session
- August 19 – Special Planning Commission meeting
  - Adeline Plan Public Hearing

AGENDA ITEMS

9. Action: Public Hearing: Home Occupations Ordinance

Staff presented proposed Zoning Ordinance amendments to Berkeley Municipal Code Chapter 23.16 (Home Occupations) to reduce the levels of discretion for moderate-impact home occupations, modify thresholds for client-visits and clarify and reformat ordinance language and structure, . Planning Commission opened public hearing, requested input, discussed the proposal and agreed upon a recommendation to Council.

Motion/Second/Carried (Vincent/Martinot) to close the public hearing at 8:23pm. Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None. Absent: Schildt. (8-0-0-1)

Motion/Second/Carried (Kapla/Vincent) to adopt staff recommendations, with a clarification in Section 23C.16.020 to reflect primary residence not Dwelling Unit. Ayes: Beach, Kapla, Krpata, Lacey, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: Martinot. Absent: Schildt. (7-0-1-1)

Public Comments: 0

10. Discussion: Referrals Supporting Berkeley Businesses

Staff provided an overview of five City Council referrals related to supporting Berkeley businesses. These referrals include expanding the Downtown Arts District Overlay, expanding beer and wine service at restaurants in Manufacturing districts, modifications in the Elmwood Commercial district, updating the definition of “research and development”, and reducing permit processes and requirements to support small businesses. Planning Commission asked staff to research referral requests and provide information on existing conditions, current regulations, desired goals, and assess potential impacts on existing businesses. Planning Commission had a particular interest in the research and development referral and referrals affecting the Manufacturing districts. Planning Commission asked staff to apply an equity lens when analyzing policy options that address referral requests.

Public Comments: 1

Chair Kapla Comment: Would to review and revise short-term rental policies in the future.

The meeting was adjourned in honor of Margie Wilkinson at 9:29pm
Commissioners in attendance: 8
Members in the public in attendance: 7
Public Speakers: 1 speakers
Length of the meeting: 2 hours and 29 minutes

City	Are there any Special Provisions on how close a business can locate to a primary or secondary school?	Are Amusement Devices allowed as an incidental use to a permitted use? If yes, what is the level of discretion?	Does this City manage Amusement Device Arcades under a category that encompasses more than just "Arcades"? If yes, what category?	What type of Permit would be required to establish an Amusement Device Arcade given the named City's regulations?
City of Berkeley	Yes- 600 ft.	Yes - 3 with and AUP or UP(PH)	No	UP(PH) or Prohibited
City of Oakland Rockridge, Piedmont, &Telegraph (South of 50th) Area	No	Yes – 3 by right	Yes - Mechanical or Electronic Games	Allowed with Conditional Use Permit (CUP) Minor CUP - space <25,000 sq. ft. Major CUP - space >25,000 sq. ft.
City of Sacramento	No	Yes - 3 by right	No	Indoor - Permit required from the Chief of Police Outdoor - Conditional Use Permit (Planning Design Committee Review Required)
City of San Diego	Yes - 300 ft.	???	Yes - Commercial Amusement Establishment	???
City of Alameda	No	No	Yes - Commercial Recreation	Conditional Use Permit
City of San Francisco	No	Yes - Up to 11 by right unless part of a Bar, then they must be approved by SF Entertainment Commission	No	Must be approved by SF Entertainment Commission
City of Albany	No	Yes - 5 by right	Yes - Commercial Recreation /Entertainment	Major Use Permit - Amusement Devices > or = to 6

Images courtesy of PrefabADU and HCD

California Department of Housing and Community Development

Accessory Dwelling Unit Handbook

September 2020

Where foundations begin

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Understanding Accessory Dwelling Units (ADUs) and Their Importance

California's housing production is not keeping pace with demand. In the last decade, less than half of the homes needed to keep up with the population growth were built. Additionally, new homes are often constructed away from job-rich areas. This lack of housing that meets people's needs is impacting affordability and causing average housing costs, particularly for renters in California, to rise significantly. As affordable housing becomes less accessible, people drive longer distances between housing they can afford and their workplace or pack themselves into smaller shared spaces, both of which reduce the quality of life and produce negative environmental impacts.

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Beyond traditional construction, widening the range of housing types can increase the housing supply and help more low-income Californians thrive. Examples of some of these housing types are Accessory Dwelling Units (ADUs - also referred to as second units, in-law units, casitas, or granny flats) and Junior Accessory Dwelling Units (JADUs).

What is an ADU?

An ADU is an accessory dwelling unit with complete independent living facilities for one or more persons and has a few variations:

- Detached: The unit is separated from the primary structure.
- Attached: The unit is attached to the primary structure.
- Converted Existing Space: Space (e.g., master bedroom, attached garage, storage area, or similar use, or an accessory structure) on the lot of the primary residence that is converted into an independent living unit.
- Junior Accessory Dwelling Unit (JADU): A specific type of conversion of existing space that is contained entirely within an existing or proposed single-family residence.

ADUs tend to be significantly less expensive to build and offer benefits that address common development barriers such as affordability and environmental quality. Because ADUs must be built on lots with existing or proposed housing, they do not require paying for new land, dedicated parking or other costly infrastructure required to build a new single-family home. Because they are contained inside existing single-family homes, JADUs require relatively

modest renovations and are much more affordable to complete. ADUs are often built with cost-effective one or two-story wood frames, which are also cheaper than other new homes. Additionally, prefabricated ADUs can be directly purchased and save much of the time and money that comes with new construction. ADUs can provide as much living space as apartments and condominiums and work well for couples, small families, friends, young people, and seniors.

Much of California's housing crisis comes from job-rich, high-opportunity areas where the total housing stock is insufficient to meet demand and exclusionary practices have limited housing choice and inclusion. Professionals and students often prefer living closer to jobs and amenities rather than spending hours commuting. Parents often want better access to schools and do not necessarily require single-family homes to meet their needs. There is a shortage of affordable units, and the units that are available can be out of reach for many people. To address our state's needs, homeowners can construct an ADU on their lot or convert an underutilized part of their home into a JADU. This flexibility benefits both renters and homeowners who can receive extra monthly rent income.

ADUs also give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place as they require more care, thus helping extended families stay together while maintaining privacy. The space can be used for a variety of reasons, including adult children who can pay off debt and save up for living on their own.

New policies are making ADUs even more affordable to build, in part by limiting the development impact fees and relaxing zoning requirements. A 2019 study from the Terner Center on Housing Innovation noted that one unit of affordable housing in the Bay Area costs about $450,000. ADUs and JADUs can often be built at a fraction of that price and homeowners may use their existing lot to create additional housing, without being required to provide additional infrastructure. Often the rent generated from the ADU can pay for the entire project in a matter of years.

ADUs and JADUs are a flexible form of housing that can help Californians more easily access job-rich, high-opportunity areas. By design, ADUs are more affordable and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education, and services for many Californians.

Summary of Recent Changes to Accessory Dwelling Unit Laws

In Government Code Section 65852.150, the California Legislature found and declared that, among other things, allowing accessory dwelling units (ADUs) in zones that allow single-family and multifamily uses provides additional rental housing, and is an essential component in addressing California's housing needs. Over the years, ADU law has been revised to improve its effectiveness at creating more housing units. Changes to ADU laws effective January 1, 2020, further reduce barriers, better streamline approval processes, and expand capacity to accommodate the development of ADUs and junior accessory dwelling units (JADUs).

ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing options for family members, friends, students, the elderly, in-home health care providers, people with disabilities, and others. Further, ADUs offer an opportunity to maximize and integrate housing choices within existing neighborhoods.

Within this context, the California Department of Housing and Community Development (HCD) has prepared this guidance to assist local governments, homeowners, architects, and the general public in encouraging the development of ADUs. Please see Attachment 1 for the complete statutory changes. The following is a summary of legislation since 2019 that amended ADU law and became effective as of January 1, 2020.

AB 68 (Ting), AB 881 (Bloom), and SB 13 (Wieckowski)

Chapter 653, Statutes of 2019 (Senate Bill 13, Section 3), Chapter 655, Statutes of 2019 (Assembly Bill 68, Section 2) and Chapter 659 (Assembly Bill 881, Section 1.5 and 2.5) build upon recent changes to ADU and JADU law (Government Code Sections 65852.2, 65852.22 and further address barriers to the development of ADUs and JADUs) (Attachment A includes the combined ADU statute updates from SB 13, AB 68 and AB 881.)

This recent legislation, among other changes, addresses the following:

- Prohibits local agencies from including in development standards for ADUs requirements on minimum lot size (Gov. Code, § 65852.2, subd. (a)(1)(B)(i)).
- Clarifies areas designated by local agencies for ADUs may be based on the adequacy of water and sewer services as well as impacts on traffic flow and public safety (Gov. Code, § 65852.2, subd. (a)(1)(A)).
- Eliminates all owner-occupancy requirements by local agencies for ADUs approved between January 1, 2020 and January 1, 2025 ((Gov. Code, § 65852.2, subd. (a)(6)).
- Prohibits a local agency from establishing a maximum size of an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom and requires approval of a permit to build an ADU of up to 800 square feet ((Gov. Code, § 65852.2, subd. (c)(2)(B) & (C)).

- Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement off-street parking spaces cannot be required by the local agency (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi)).
- Reduces the maximum ADU and JADU application review time from 120 days to 60 days (Gov. Code, § 65852.2, subd. (a)(3) and (b)).
- Clarifies that "public transit" includes various means of transportation that charge set fees, run on fixed routes and are available to the public (Gov. Code, § 65852.2, subd. (j)(10)).
- Establishes impact fee exemptions and limitations based on the size of the ADU. ADUs up to 750 square feet are exempt from impact fees (Government Code Section 65852.2, Subdivision (f)(3)); ADUs that are 750 square feet or larger may be charged impact fees but only such fees that are proportional in size (by square foot) to those for the primary dwelling unit (Gov. Code, § 65852.2, subd. (f)(3)).
- Defines an "accessory structure" to mean a structure that is accessory or incidental to a dwelling on the same lot as the ADU (Gov. Code, § 65852.2, subd. (j)(2)).
- Authorizes HCD to notify the local agency if HCD finds that their ADU ordinance is not in compliance with state law (Gov. Code, § 65852.2, subd. (h)(2)).
- Clarifies that a local agency may identify an ADU or JADU as an adequate site to satisfy RHNA housing needs (Gov. Code § 65583.1, subd. (a), and § 65852.2, subd. (m)).
- Permits JADUs even where a local agency has not adopted an ordinance expressly authorizing them (Gov. Code, § 65852.2, subd. (a)(3), (b), and (e)).
- Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom or an interior entry into the single-family residence (Gov. Code § 65852.22, subd. (a)(4); Former Gov. Code § 65852.22, subd. (a)(5)).
- Requires, upon application and approval, a local agency to delay enforcement against a qualifying substandard ADU for five (5) years to allow the owner to correct the violation, so long as the violation is not a health and safety issue, as determined by the enforcement agency (Gov. Code, § 65852.2, subd. (n); Health and Safety Code § 17980.12).

AB 587 (Friedman), AB 670 (Friedman), and AB 671 (Friedman)

In addition to the legislation listed above, AB 587 (Chapter 657, Statutes of 2019), AB 670 (Chapter 178, Statutes of 2019), and AB 671 (Chapter 658, Statutes of 2019) also have an impact on state ADU law, particularly through Health and Safety Code Section 17980.12. These recent pieces of legislation, among other changes, address the following:

- AB 587 creates a narrow exemption to the prohibition for ADUs to be sold or otherwise conveyed separately from the primary dwelling by allowing deed-restricted sales to occur if the local agency adopts an ordinance. To qualify, the primary dwelling and the ADU are to be built by a qualified nonprofit corporation whose mission is to provide units to low-income households (Gov. Code § 65852.26).
- AB 670 provides that covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a lot zoned for single-family residential use are void and unenforceable (Civil Code Section 4751).

- AB 671 requires local agencies' housing elements to include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs. (Gov. Code § 65583; Health and Safety Code § 50504.5)

Frequently Asked Questions: Accessory Dwelling Units[1]

1. Legislative Intent

- **Should a local ordinance encourage the development of accessory dwelling units?**

  Yes. Pursuant to Government Code Section 65852.150, the California Legislature found and declared that, among other things, California is facing a severe housing crisis and ADUs are a valuable form of housing that meets the needs of family members, students, the elderly, in-home health care providers, people with disabilities and others. Therefore, ADUs are an essential component of California's housing supply.

  ADU law and recent changes intend to address barriers, streamline approval, and expand potential capacity for ADUs, recognizing their unique importance in addressing California's housing needs. The preparation, adoption, amendment, and implementation of local ADU

Government Code 65852.150:

(a) The Legislature finds and declares all of the following:

(1) Accessory dwelling units are a valuable form of housing in California.

(2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.

(3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.

(4) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.

(5) California faces a severe housing crisis.

(6) The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.

(7) Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.

(8) Accessory dwelling units are, therefore, an essential component of California's housing supply.

(b) It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.

[1] Note: Unless otherwise noted, the Government Code section referenced is 65852.2.

ordinances must be carried out consistent with Government Code, Section 65852.150 and must not unduly constrain the creation of ADUs. Local governments adopting ADU ordinances should carefully weigh the adoption of zoning, development standards, and other provisions for impacts on the development of ADUs.

In addition, ADU law is the statutory minimum requirement. Local governments may elect to go beyond this statutory minimum and further the creation of ADUs. Many local governments have embraced the importance of ADUs as an important part of their overall housing policies and have pursued innovative strategies. (Gov. Code, § 65852.2, subd. (g)).

2. Zoning, Development and Other Standards

A) Zoning and Development Standards

- **Are ADUs allowed jurisdiction wide?**

No. ADUs proposed pursuant to subdivision (e) must be considered in any residential or mixed-use zone. For other ADUs, local governments may, by ordinance, designate areas in zones where residential uses are permitted that will also permit ADUs. However, any limits on where ADUs are permitted may only be based on the adequacy of water and sewer service, and the impacts on traffic flow and public safety. Further, local governments may not preclude the creation of ADUs altogether, and any limitation should be accompanied by detailed findings of fact explaining why ADU limitations are required and consistent with these factors.

Examples of public safety include severe fire hazard areas and inadequate water and sewer service and includes cease and desist orders. Impacts on traffic flow should consider factors like lesser car ownership rates for ADUs and the potential for ADUs to be proposed pursuant to Government Code section 65852.2, subdivision (e). Finally, local governments may develop alternative procedures, standards, or special conditions with mitigations for allowing ADUs in areas with potential health and safety concerns. (Gov. Code, § 65852.2, subd. (e))

Residential or mixed-use zone should be construed broadly to mean any zone where residential uses are permitted by-right or by conditional use.

- **Can a local government apply design and development standards?**

Yes. A local government may apply development and design standards that include, but are not limited to, parking, height, setback, 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 shall be sufficiently objective to allow ministerial review of an ADU. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i))

ADUs created under subdivision (e) of Government Code 65852.2 shall not be subject to design and development standards except for those that are noted in the subdivision.

What does objective mean?

"objective zoning standards" and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Gov Code § 65913.4, subd. (a)(5)

ADUs that do not meet objective and ministerial development and design standards may still be permitted through an ancillary discretionary process if the applicant chooses to do so. Some jurisdictions with compliant ADU ordinances apply additional processes to further the creation of ADUs that do not otherwise comply with the minimum standards necessary for ministerial review. Importantly, these processes are intended to provide additional opportunities to create ADUs that would not otherwise be permitted, and a discretionary process may not be used to review ADUs that are fully compliant with ADU law. Examples of these processes include areas where additional health and safety concerns must be considered, such as fire risk.

- **Can ADUs exceed general plan and zoning densities?**

Yes. An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning that does not count toward the allowable density. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Further, local governments could elect to allow more than one ADU on a lot, and ADUs are automatically a residential use deemed consistent with the general plan and zoning. (Gov. Code, § 65852.2, subd. (a)(1)(C))

- **Are ADUs permitted ministerially?**

Yes. ADUs must be considered, approved, and permitted ministerially, without discretionary action. Development and other decision-making standards must be sufficiently objective to allow for ministerial review. Examples include numeric and fixed standards such as heights or setbacks or design standards such as colors or materials. Subjective standards require judgement and can be interpreted in multiple ways such as privacy, compatibility with neighboring properties or promoting harmony and balance in the community; subjective standards shall not be imposed for ADU development. Further, ADUs must not be subject to a hearing or any ordinance regulating the issuance of variances or special use permits and must be considered ministerially. (Gov. Code, § 65852.2, subd. (a)(3))

- **Can I create an ADU if I have multiple detached dwellings on a lot?**

Yes. A lot where there are currently multiple detached single-family dwellings is eligible for creation of one ADU per lot by converting space within the proposed or existing space of a single-family dwelling or existing structure and a new construction detached ADU subject to certain development standards.

- **Can I build an ADU in a historic district, or if the primary residence is subject to historic preservation?**

Yes. ADUs are allowed within a historic district, and on lots where the primary residence is subject to historic preservation. State ADU law allows for a local agency to impose standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards do not apply to ADUs proposed pursuant to Gov. Code § 65852.2, subd. (e).

As with non-historic resources, a jurisdiction may impose objective and ministerial standards that are sufficiently objective to be reviewed ministerially and do not unduly burden the creation of ADUs. Jurisdictions are encouraged to incorporate these standards into their ordinance and submit these standards along with their ordinance to HCD. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i) & (a)(5))

B) Size Requirements

- **Is there a minimum lot size requirement?**

No. While local governments may impose standards on ADUs, these standards shall not include minimum lot size requirements. Further, lot coverage requirements cannot preclude the creation of a statewide exemption ADU (800 square feet ADU with a height limitation of 16 feet and 4 feet side and rear yard setbacks). If lot coverage requirements do not allow such an ADU, an automatic exception or waiver should be given to appropriate development standards such as lot coverage, floor area or open space requirements. Local governments may continue to enforce building and health and safety standards and may consider design, landscape, and other standards to facilitate compatibility.

What is a Statewide Exemption ADU? A statewide exemption ADU is an ADU of up to 800 square feet, 16 foot in height and with 4-foot side and rear yard setbacks. ADU law requires that no lot coverage, floor area ratio, open space, or minimum lot size will preclude the construction of a statewide exemption ADU. Further, ADU law allows the construction of a detached new construction statewide exemption ADU to be combined with a JADU within any zone allowing residential or mixed uses regardless of zoning and development standards imposed in an ordinance. See more discussion below.

- **Can minimum and maximum unit sizes be established for ADUs?**

Yes. A local government may, by ordinance, establish minimum and maximum unit size requirements for both attached and detached ADUs. However, maximum unit size requirements must be at least 850 square feet and 1,000 square feet for ADUs with more than one bedroom. For local agencies without an ordinance, maximum unit sizes are 1,200 square feet for a new detached ADU and up to 50 percent of the floor area of the existing primary dwelling for an attached ADU (at least 800 square feet). Finally, the local agency must not establish by ordinance a minimum square footage requirement that prohibits an efficiency unit, as defined in Health and Safety Code § 17958.1.

The conversion of an existing accessory structure or a portion of the existing primary residence to an ADU is not subject to size requirements. For example, an existing 3,000 square foot barn converted to an ADU would not be subject to the size requirements, regardless if a local government has an adopted ordinance. Should an applicant want to expand an accessory structure to create an ADU beyond 150 square feet, this ADU would be subject to the size maximums outlined in state ADU law, or the local agency's adopted ordinance.

- **Can a percentage of the primary dwelling be used for a maximum unit size?**

Yes. Local agencies may utilize a percentage (e.g., 50 percent) of the primary dwelling as a maximum unit size for attached or detached ADUs but only if it does not restrict an ADU's size to less than the standard of at least 850 sq. ft (or at least 1000 square feet. for ADUs with more than one bedroom). Local agencies must not, by ordinance, establish any other minimum or maximum unit sizes, including based on a percentage of the primary dwelling, that precludes a statewide exemption ADU. Local agencies utilizing

percentages of primary dwelling as maximum unit sizes could consider multi-pronged standards to help navigate these requirements (e.g., shall not exceed 50 percent of the dwelling or 1,000 square feet, whichever is greater).

- **Can maximum unit sizes exceed 1,200 square feet for ADUs?**

Yes. Maximum unit sizes, by ordinance, can exceed 1,200 square feet for ADUs. ADU law does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs (Gov. Code, § 65852.2, subd. (g)).

Larger unit sizes can be appropriate in a rural context or jurisdictions with larger lot sizes and is an important approach to creating a full spectrum of ADU housing choices.

C) Parking Requirements

- **Can parking requirements exceed one space per unit or bedroom?**

No. Parking requirements for ADUs shall not exceed one parking space per unit or bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. Guest parking spaces shall not be required for ADUs under any circumstances.

What is Tandem Parking? Tandem parking means two or more automobiles that are parked on a driveway or in any other location on a lot, lined up behind one another. (Gov. Code, § 65852.2, subd. (a)(1)(D)(x)(I) and (j)(11))

Local agencies may choose to eliminate or reduce parking requirements for ADUs such as requiring zero or half a parking space per each ADU.

- **Is flexibility for siting parking required?**

Yes. Local agencies should consider flexibility when siting parking for ADUs. Offstreet parking spaces for the ADU shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made. Specific findings must be based on specific site or regional topographical or fire and life safety conditions.

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU, or converted to an ADU, the local agency shall not require that those offstreet parking spaces for the primary unit be replaced. (Gov. Code, § 65852.2, subd. (a)(D)(xi))

- **Can ADUs be exempt from parking?**

Yes. A local agency shall not impose ADU parking standards for any of the following, pursuant to Gov. Code § 65852.2, subd. (d)(1-5) and (j)(10))

(1) Accessory dwelling unit is located within one-half mile walking distance of public transit.
(2) Accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) Accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

Note: For the purposes of state ADU law, a jurisdiction may use the designated areas where a car share vehicle may be accessed. Public transit is any location where an individual may access buses, trains, subways and other forms of transportation that charge set fares, run on fixed routes and are available to the general public. Walking distance is defined as the pedestrian shed to reach public transit. Additional parking requirements to avoid impacts to public access may be required in the coastal zone.

D) Setbacks

- **Can setbacks be required for ADUs?**

Yes. A local agency may impose development standards, such as setbacks, for the creation of ADUs. Setbacks may include front, corner, street, and alley setbacks. Additional setback requirements may be required in the coastal zone if required by a local coastal program. Setbacks may also account for utility easements or recorded setbacks. However, setbacks must not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant to subdivision (e). Further, a setback of no more than four feet from the side and rear lot lines shall be required for an attached or detached ADU. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii))

A local agency may also allow the expansion of a detached structure being converted into an ADU when the existing structure does not have four-foot rear and side setbacks. A local agency may also allow the expansion area of a detached structure being converted into an ADU to have no setbacks, or setbacks of less than four feet, if the existing structure has no setbacks, or has setbacks of less than four feet. A local agency shall not require setbacks of more than four feet for the expanded area of a detached structure being converted into an ADU.

A local agency may still apply front yard setbacks for ADUs, but front yard setbacks cannot preclude a statewide exemption ADU and must not unduly constrain the creation of all types of ADUs. (Gov. Code, § 65852.2, subd. (c))

E) Height Requirements

- **Is there a limit on the height of an ADU or number of stories?**

Not in state ADU law, but local agencies may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i))

F) Bedrooms

- **Is there a limit on the number of bedrooms?**

State ADU law does not allow for the limitation on the number of bedrooms of an ADU. A limit on the number of bedrooms could be construed as a discriminatory practice towards protected classes, such as familial status, and would be considered a constraint on the development of ADUs.

G) Impact Fees

- **Can impact fees be charged for an ADU less than 750 square feet?**

No. An ADU is exempt from incurring impact fees from local agencies, special districts, and water corporations if less than 750 square feet. Should an ADU be 750 square feet or larger, impact fees shall be charged proportionately in relation to the square footage of the ADU to the square footage of the primary dwelling unit.

What is "Proportionately"?
"Proportionately" is some amount that corresponds to a total amount, in this case, an impact fee for a single-family dwelling. For example, a 2,000 square foot primary dwelling with a proposed 1,000 square foot ADU could result in 50 percent of the impact fee that would be charged for a new primary dwelling on the same site. In all cases, the impact fee for the ADU must be less than the primary dwelling. Otherwise, the fee is not calculated proportionately. When utilizing proportions, careful consideration should be given to the impacts on costs, feasibility, and ultimately, the creation of ADUs. In the case of the example above, anything greater than 50 percent of the primary dwelling could be considered a constraint on the development of ADUs.

For purposes of calculating the fees for an ADU on a lot with a multifamily dwelling, the proportionality shall be based on the average square footage of the units within that multifamily dwelling structure. For ADUs converting existing space with a 150 square foot expansion, a total ADU square footage over 750 square feet could trigger the proportionate fee requirement. (Gov. Code, § 65852.2, subd. (f)(3)(A))

- **Can local agencies, special districts or water corporations waive impact fees?**

Yes. Agencies can waive impact and any other fees for ADUs. Also, local agencies may also use fee deferrals for applicants.

- **Can school districts charge impact fees?**

Yes. School districts are authorized but do not have to levy impact fees for ADUs greater than 500 square feet pursuant to Section 17620 of the Education Code. ADUs less than 500 square feet are not subject to school impact fees. Local agencies are encouraged to coordinate with school districts to carefully weigh the importance of promoting ADUs, ensuring appropriate nexus studies and appropriate fees to facilitate construction or reconstruction of adequate school facilities.

- **What types of fees are considered impact fees?**

Impact fees charged for the construction of ADUs must be determined in accordance with the Mitigation Fee Act and generally include any monetary exaction that is charged by a local agency in connection with the approval of an ADU, including impact fees, for the purpose of defraying all or a portion of the cost of public facilities relating to the ADU. A local agency, special district or water corporation shall not consider ADUs as a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer services. However, these provisions do not apply to ADUs that are constructed concurrently with a new single-family home (Gov. Code, § 65852.2, subd. (f) and Government Code § 66000)

- **Can I still be charged water and sewer connection fees?**

ADUs converted from existing space and JADUs shall not be considered by a local agency, special district or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, unless constructed with a new single-family dwelling. The connection fee or capacity charge shall be proportionate to the burden of the proposed ADU, based on its square footage or plumbing fixtures as compared to the primary dwelling. State ADU law does not cover monthly charge fees. (Gov. Code, § 65852.2, subd. (f)(2)(A))

H) Conversion of Existing Space in Single Family, Accessory and Multifamily Structures and Other Statewide Permissible ADUs (Subdivision (e))

- **Are local agencies required to comply with subdivision (e)?**

Yes. All local agencies must comply with subdivision (e). This subdivision requires the ministerial approval of ADUs within a residential or mixed-use zone. The subdivision creates four categories of ADUs that should not be subject to other specified areas of ADU law, most notably zoning and development standards. For example, ADUs under this subdivision should not have to comply with lot coverage, setbacks, heights, and unit sizes. However, ADUs under this subdivision must meet the building code and health and safety requirements. The four categories of ADUs under subdivision (e) are:

a. One ADU or JADU per lot within the existing space of a single-family dwelling, or an ADU within an accessory structure that meets specified requirements such as exterior access and setbacks for fire and safety.
b. One detached new construction ADU that does not exceed four-foot side and rear yard setbacks. This ADU may be combined on the same lot with a JADU and may be required to meet a maximum unit size requirement of 800 square feet and a height limitation of 16 feet.
c. Multiple ADUs within the portions of multifamily structures that are not used as livable space. Local agencies must allow at least one of these types of ADUs and up to 25 percent of the existing multifamily structures.
d. Up to two detached ADUs on a lot that has existing multifamily dwellings that are subject to height limits of 16 feet and 4-foot rear and side yard setbacks.

The above four categories are not required to be combined. For example, local governments are not required to allow (a) and (b) together or (c) and (d) together. However, local agencies may elect to allow these ADU types together.

Local agencies shall allow at least one ADU to be created within the non-livable space within multifamily dwelling structures, or up to 25 percent of the existing multifamily dwelling units within a structure and may also allow not more than two ADUs on the lot detached from the multifamily dwelling structure. New detached units are subject to height limits of 16 feet and shall not be required to have side and rear setbacks of more than four feet.

The most common ADU that can be created under subdivision (e) is a conversion of proposed or existing space of a single-family dwelling or accessory structure into an ADU, without any prescribed size limitations, height, setback, lot coverage, architectural review, landscape, or other development standards. This would enable the conversion of an accessory structure, such as a 2,000 square foot garage, to an ADU without any additional requirements other than compliance with building standards for dwellings. These types of ADUs are also eligible for a 150 square foot expansion (see discussion below).

ADUs created under subdivision (e) shall not be required to provide replacement or additional parking. Moreover, these units shall not, as a condition for ministerial approval, be required to correct any existing or created nonconformity. Subdivision (e) ADUs shall be required to be rented for terms longer than 30 days, and only require fire sprinklers if fire sprinklers are required for the primary residence. These ADUs

shall not be counted as units when calculating density for the general plan and are not subject to owner-occupancy.

- **Can I convert my accessory structure into an ADU?**

  Yes. The conversion of garages, sheds, barns, and other existing accessory structures, either attached or detached from the primary dwelling, into ADUs is permitted and promoted through the state ADU law. These conversions of accessory structures are not subject to any additional development standard, such as unit size, height, and lot coverage requirements, and shall be from existing space that can be made safe under Building and Safety Codes. A local agency should not set limits on when the structure was created, and the structure must meet standards for Health & Safety. Finally, local governments may also consider the conversion of illegal existing space and could consider alternative building standards to facilitate the conversion of existing illegal space to minimum life and safety standards.

- **Can an ADU converting existing space be expanded?**

  Yes. An ADU within the existing or proposed space of a single-family dwelling can be expanded 150 square feet beyond the physical dimensions of the structure but shall be limited to accommodating ingress and egress. An example of where this expansion could be applicable is for the creation of a staircase to reach a second story ADU. These types of ADUs shall conform to setbacks sufficient for fire and safety.

  A local agency may allow for an expansion beyond 150 square feet, though the ADU would have to comply with the size maximums as per state ADU law, or a local agency's adopted ordinance.

  As a JADU is limited to being created within the walls of a primary residence, this expansion of up to 150 square feet does not pertain to JADUs.

I) Nonconforming Zoning Standards

- **Does the creation of an ADU require the applicant to carry out public improvements?**

  No physical improvements shall be required for the creation or conversion of an ADU. Any requirement to carry out public improvements is beyond what is required for the creation of an ADU, as per state law. For example, an applicant shall not be required to improve sidewalks, carry out street improvements, or access improvements to create an ADU. Additionally, as a condition for ministerial approval of an ADU, an applicant shall not be required to correct nonconforming zoning conditions. (Gov. Code, § 65852.2, subd. (e)(2))

J) Renter and Owner-occupancy

- **Are rental terms required?**

  Yes. Local agencies may require that the property be used for rentals of terms longer than 30 days. ADUs permitted ministerially, under subdivision (e), shall be rented for terms longer than 30 days. (Gov. Code, § 65852.2, subd. (a)(6) & (e)(4))

- **Are there any owner-occupancy requirements for ADUs?**

No. Prior to recent legislation, ADU laws allowed local agencies to elect whether the primary dwelling or ADU was required to be occupied by an owner. The updates to state ADU law removed the owner-occupancy allowance for newly created ADUs effective January 1, 2020. The new owner-occupancy exclusion is set to expire on December 31, 2024. Local agencies may not retroactively require owner occupancy for ADUs permitted between January 1, 2020 and December 31, 2024.

However, should a property have both an ADU and JADU, JADU law requires owner-occupancy of either the newly created JADU, or the single-family residence. Under this specific circumstance, a lot with an ADU would be subject to owner-occupancy requirements. – (Gov. Code, § 65852.2, subd. (a)(2))

K) Fire Sprinkler Requirements

- **Are fire sprinklers required for ADUs?**

No. Installation of fire sprinklers may not be required in an ADU if sprinklers are not required for the primary residence. For example, a residence built decades ago would not have been required to have fire sprinklers installed under the applicable building code at the time. Therefore, an ADU created on this lot cannot be required to install fire sprinklers. However, if the same primary dwelling recently undergoes significant remodeling and is now required to have fire sprinklers, any ADU created after that remodel must likewise install fire sprinklers. (Gov. Code, § 65852.2, subd. (a)(1)(D)(xii) and (e)(3))

Please note, for ADUs created on lots with multifamily residential structures, the entire residential structure shall serve as the “primary residence”. Therefore, if the multifamily structure is served by fire sprinklers, the ADU can be required to install fire sprinklers.

L) Solar Panel Requirements

- **Are solar panels required for new construction ADUs?**

Yes, newly constructed ADUs are subject to the Energy Code requirement to provide solar panels if the unit(s) is a newly constructed, non-manufactured, detached ADU. Per the California Energy Commission (CEC), the panels can be installed on the ADU or on the primary dwelling unit. ADUs that are constructed within existing space, or as an addition to existing homes, including detached additions where an existing detached building is converted from non-residential to residential space, are not subject to the Energy Code requirement to provide solar panels.

Please refer to the CEC on this matter. For more information, see the CEC’s website www.energy.ca.gov. You may email your questions to: title24@energy.ca.gov, or contact the Energy Standards Hotline at 800-772-3300. CEC memos can also be found on HCD’s website at https://www.hcd.ca.gov/policy-research/AccessoryDwellingUnits.shtml.

3. Junior Accessory Dwelling Units (JADUs) – Government Code Section 65852.22

- **Are two JADUs allowed on a lot?**

No. A JADU may be created on a lot zoned for single-family residences with one primary dwelling. The JADU may be created within the walls of the proposed or existing single-family residence, including attached garages, as attached garages are considered within the walls of the existing single-family

residence. Please note that JADUs created in the attached garage are not subject to the same parking protections as ADUs and could be required by the local agency to provide replacement parking.

JADUs are limited to one per residential lot with a single-family residence. Lots with multiple detached single-family dwellings are not eligible to have JADUs. (Gov. Code, § 65852.22, subd. (a)(1))

- **Are JADUs allowed in detached accessory structures?**

No, JADUs are not allowed in accessory structures. The creation of a JADU must be within the single-family residence. As noted above, attached garages are eligible for JADU creation. The maximum size for a JADU is 500 square feet. (Gov. Code, § 65852.22, subd. (a)(1), (a)(4), and (h)(1))

- **Are JADUs allowed to be increased up to 150 square feet when created within an existing structure?**

No. Only ADUs are allowed to add up to 150 square feet "beyond the physical dimensions of the existing accessory structure" to provide for ingress. (Gov. Code, § 65852.2, subd. (e)(1)(A)(i).)

This provision extends only to ADUs and excludes JADUs. A JADU is required to be created within the single-family residence.

- **Are there any owner-occupancy requirements for JADUs?**

Yes. There are owner-occupancy requirements for JADUs. The owner must reside in either the remaining portion of the primary residence, or in the newly created JADU. (Gov. Code, § 65852.22, subd. (a)(2))

4. Manufactured Homes and ADUs

- **Are manufactured homes considered to be an ADU?**

Yes. An ADU is any residential dwelling unit with independent facilities and permanent provisions for living, sleeping, eating, cooking and sanitation. An ADU includes a manufactured home (Health and Safety Code §18007).

> Health and Safety Code section 18007, subdivision (a) **"Manufactured home,"** for the purposes of this part, means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. "Manufactured home" includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

5. ADUs and the Housing Element

- **Do ADUs and JADUs count toward a local agency's Regional Housing Needs Allocation?**

  Yes. Pursuant to Gov. Code § 65852.2 subd. (m) and Government Code section 65583.1, ADUs and JADUs may be utilized towards the Regional Housing Need Allocation (RHNA) and Annual Progress Report (APR) pursuant to Government Code Section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally an ADU, and a JADU with shared sanitation facilities, and any other unit that meets the census definition and is reported to DOF as part of the DOF annual City and County Housing Unit Change Survey can be credited toward the RHNA based on the appropriate income level. The housing element or APR must include a reasonable methodology to demonstrate the level of affordability. Local governments can track actual or anticipated affordability to assure ADUs and JADUs are counted towards the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit or other applications.

- **Is analysis required to count ADUs toward the RHNA in the housing element?**

  Yes. To calculate ADUs in the housing element, local agencies must generally use a three-part approach: (1) development trends, (2) anticipated affordability and (3) resources and incentives. Development trends must consider ADUs permitted in the prior planning period and may also consider more recent trends. Anticipated affordability can use a variety of methods to estimate the affordability by income group. Common approaches include rent surveys of ADUs, using rent surveys and square footage assumptions and data available through the APR pursuant to Government Code section 65400. Resources and incentives include policies and programs to encourage ADUs, such as prototype plans, fee waivers, expedited procedures and affordability monitoring programs.

- **Are ADUs required to be addressed in the housing element?**

  Yes. The housing element must include a description of zoning available to permit ADUs, including development standards and analysis of potential constraints on the development of ADUs. The element must include programs as appropriate to address identified constraints. In addition, housing elements must include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires the California Department of Housing and Community Development to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs. (Gov. Code § 65583 and Health and Safety Code § 50504.5.)

6. Homeowners Association

- **Can my local Homeowners Association (HOA) prohibit the construction of an ADU?**

  No. Assembly Bill 670 (2019) amended Section 4751 of the Civil Code to preclude planned developments from prohibiting or unreasonably restricting the construction or use of an ADU on a lot zoned for single-family residential use. Covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or reasonably restrict the construction or use of an ADU or JADU on such lots are void and unenforceable. Applicants who encounter issues with creating ADUs within CC&Rs are encouraged to reach out to HCD for additional guidance.

7. Enforcement

- **Does HCD have enforcement authority over ADU ordinances?**

  Yes. After adoption of the ordinance, HCD may review and submit written findings to the local agency as to whether the ordinance complies with state ADU law. If the local agency's ordinance does not comply, HCD must provide a reasonable time, no longer than 30 days, for the local agency to respond, and the local agency shall consider HCD's findings to amend the ordinance to become compliant. If a local agency does not make changes and implements an ordinance that is not compliant with state law, HCD may refer the matter to the Attorney General.

  In addition, HCD may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify ADU law.

8. Other

- **Are ADU ordinances existing prior to new 2020 laws null and void?**

  No. Ordinances existing prior to the new 2020 laws are only null and void to the extent that existing ADU ordinances conflict with state law. Subdivision (a)(4) of Government Code Section 65852.2 states an ordinance that fails to meet the requirements of subdivision (a) shall be null and void and shall apply the state standards (see attachment 3) until a compliant ordinance is adopted. However, ordinances that substantially comply with ADU law may continue to enforce the existing ordinance to the extent it complies with state law. For example, local governments may continue the compliant provisions of an ordinance and apply the state standards where pertinent until the ordinance is amended or replaced to fully comply with ADU law. At the same time, ordinances that are fundamentally incapable of being enforced because key provisions are invalid -- meaning there is not a reasonable way to sever conflicting provisions and apply the remainder of an ordinance in a way that is consistent with state law -- would be fully null and void and must follow all state standards until a compliant ordinance is adopted.

- **Do local agencies have to adopt an ADU Ordinance?**

  No. Local governments may choose not to adopt an ADU ordinance. Should a local government choose to not adopt an ADU ordinance, any proposed ADU development would be only subject to standards set in state ADU law. If a local agency adopts an ADU ordinance, it may impose zoning, development, design, and other standards in compliance with state ADU law. (See Attachment 4 for a state standards checklist.)

- **Is a local government required to send an ADU Ordinance to the California Department of Housing and Community Development (HCD)?**

  Yes. A local government, upon adoption of an ADU ordinance, must submit a copy of the adopted ordinance to the California Department of Housing and Community Development (HCD) within 60 days after adoption. After the adoption of an ordinance, the Department may review and submit written findings to the local agency as to whether the ordinance complies with this section. (Gov. Code, § 65852.2, subd. (h)(1))

Local governments may also submit a draft ADU ordinance for preliminary review by the HCD. This provides local agencies the opportunity to receive feedback on their ordinance and helps to ensure compliance with the new state ADU law.

- **Are charter cities and counties subject to the new ADU laws?**

  Yes. ADU law applies to a local agency which is defined as a city, county, or city and county, whether general law or chartered (Gov. Code, § 65852.2, subd. (j)(5)).

  Further, pursuant to Chapter 659, Statutes of 2019 (AB 881), the Legislature found and declared ADU law as *"…a matter of statewide concern rather than a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution*" and concluded that ADU law applies to all cities, including charter cities.

- **Do the new ADU laws apply to jurisdictions located in the Coastal Zone?**

  Yes. ADU laws apply to jurisdictions in the Coastal Zone, but do not necessarily alter or lessen the effect or application of Coastal Act resource protection policies. - (Gov. Code, § 65852.22, subd. (l)).

  Coastal localities should seek to harmonize the goals of protecting coastal resources and addressing housing needs of Californians. For example, where appropriate, localities should amend Local Coastal Programs for California Coastal Commission review to comply with the California Coastal Act and new ADU laws. For more information, see the California Coastal Commission 2020 Memo and reach out to the locality's local Coastal Commission district office.

- **What is considered a multifamily dwelling?**

  For the purposes of state ADU law, a structure with two or more attached dwellings on a single lot is considered a multifamily dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings for the purposes of state ADU law.

Resources

Attachment 1: Statutory Changes (Strikeout/Italics and Underline)

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2
(AB 881, AB 68 and SB 13 Accessory Dwelling Units)
(Changes noted in strikeout, underline/italics)

Effective January 1, 2020, Section 65852.2 of the Government Code is amended to read:

65852.2.

(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily *dwelling residential* use. The ordinance shall do all of the following:
(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on ~~criteria that may include, but are not limited to,~~ the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. *A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.*
(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, ~~lot coverage,~~ 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 ~~Places.~~ *Resources. These standards shall not include requirements on minimum lot size.*
(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.
(D) Require the accessory dwelling units to comply with all of the following:
(i) The *accessory dwelling* unit may be rented separate from the primary residence, ~~buy~~ *but* may not be sold or otherwise conveyed separate from the primary residence.
(ii) The lot is zoned to allow single-family or multifamily *dwelling residential* use and includes a proposed or existing ~~single-family~~ dwelling.
(iii) The accessory dwelling unit is either attached *to,* or located ~~within the living area of the~~ *within, the* proposed or existing primary ~~dwelling or~~ *dwelling, including attached garages, storage areas or similar uses, or an accessory structure or* detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.
(iv) ~~The total area of floorspace of~~ *If there is an existing primary dwelling, the total floor area of* an attached accessory dwelling unit shall not exceed 50 percent of the ~~proposed or existing primary dwelling living area or 1,200 square feet.~~ *existing primary dwelling.*
(v) The total *floor* area ~~of floorspace~~ for a detached accessory dwelling unit shall not exceed 1,200 square feet.
(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
(vii) No setback shall be required for an existing ~~garage~~ *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, and a setback of no more than ~~five~~ *four* feet from the side and rear lot lines shall be required for an accessory dwelling unit that is ~~constructed above a garage.~~ *not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.*
(viii) Local building code requirements that apply to detached dwellings, as appropriate.
(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.
(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per *accessory dwelling* unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.
(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.
(III) This clause shall not apply to ~~a~~ an accessory dwelling unit that is described in subdivision (d).
(xi) 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, ~~and~~ the local agency ~~requires~~ *shall not require* that those ~~offstreet~~ *offstreet* parking spaces be ~~replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d)~~*. replaced.*

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) ~~When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application~~ *A permit application for an accessory dwelling unit or a junior accessory dwelling unit* shall be considered *and approved* ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use ~~permits, within 120 days after receiving the application~~. *permits. The permitting agency shall act on the application to create an accessory dwelling unit or a 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. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay.* A local agency may charge a fee to reimburse it for costs ~~that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature,~~ *incurred to implement this paragraph,* including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency ~~subsequent to the effective date of the act adding this paragraph~~ shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. ~~In the event that~~ *If* a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void ~~upon the effective date of the act adding this paragraph~~ and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the *delay or* denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot ~~zoned for residential use~~ that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be ~~utilized~~ *used* or imposed, *including any owner-occupant requirement,* except that a local agency may require ~~an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or~~ that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision ~~(a) within 120 days after receiving the application.~~ *(a). The permitting agency shall act on the application to create an accessory dwelling unit or a 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. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted*

with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

~~(c)~~ *(C)* ~~A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum~~ *Any other minimum* or maximum size for an accessory dwelling unit, ~~or~~ size based upon a percentage of the proposed or existing primary dwelling, ~~shall be established by ordinance~~ *or limits on lot coverage, floor area ratio, open space, and minimum lot size,* for either attached or detached dwellings that does not permit at least an ~~efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.~~ *800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.*

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile *walking distance* of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) *(1)* Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall 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 if the unit is contained within the existing space of a single-family residence or accessory structure, including, but not limited to, a studio, pool house, or other similar structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. A city may require owner occupancy for either the primary or the accessory dwelling unit created through this process.~~ *within a residential or mixed-use zone to create any of the following:*

(A) One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not

used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.
(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.
(D) 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 a height limit of 16 feet and four-foot rear yard and side setbacks.
(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.
(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.
(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.
(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite water treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.
(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.
(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).
(2) ~~Accessory~~ *An accessory* dwelling ~~units~~ *unit* shall not be considered by a local agency, special district, or water corporation to be a new residential use for ~~the~~ purposes of calculating connection fees or capacity charges for utilities, including water and sewer ~~service.~~ *service, unless the accessory dwelling unit was constructed with a new single-family dwelling.*
(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.
(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.
~~(A)~~ *(4)* For an accessory dwelling unit described in *subparagraph (A) of paragraph (1) of* subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity ~~charge.~~ *charge, unless the accessory dwelling unit was constructed with a new single-family home.*
~~(B)~~ *(5)* For an accessory dwelling unit that is not described in *subparagraph (A) of paragraph (1) of* subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its ~~size~~ *square feet* or the number of its ~~plumbing fixtures,~~ *drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials,* upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.
(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.
(h) ~~Local~~ *(1)* ~~agencies~~ *A local agency* shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. ~~The department may review and comment on this submitted ordinance.~~ *After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.*
(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.
(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.
(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.
(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.
(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.
(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.
~~(i)~~ *(j)* As used in this section, the following terms mean:
~~(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.~~
~~(2) "Local agency" means a city, county, or city and county, whether general law or chartered.~~
~~(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.~~
~~(4)~~ *(1)* "Accessory dwelling unit" means an attached or a detached residential dwelling unit ~~which~~ *that* provides complete independent living facilities for one or more ~~persons.~~ *persons and is located on a lot with a proposed or existing primary residence.* It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family *or multifamily* dwelling is *or will be* situated. An accessory dwelling unit also includes the following:
(A) An efficiency unit.
(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.
(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
~~(A)~~ *(3)* ~~An efficiency unit,~~ *"Efficiency unit" has the same meaning* as defined in Section 17958.1 of the Health and Safety Code.
~~(B)~~ *(4)* ~~A manufactured home, as defined in Section 18007 of the Health and Safety Code.~~ *"Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.*
(5) "Local agency" means a city, county, or city and county, whether general law or chartered.
(6) "Neighborhood" has the same meaning as set forth in Section 65589.5.
(7) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.
~~(5)~~ *(8)* "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
(9) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
(10) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
~~(6)~~ *(11)* "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.
~~(j)~~ *(l)* Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.
(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.
(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2)

below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:
(1) The accessory dwelling unit was built before January 1, 2020.
(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
(o) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

(Becomes operative on January 1, 2025)
Section 65852.2 of the Government Code is amended to read (changes from January 1, 2020 statute noted in underline/italic):

65852.2.
(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, 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. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) 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 to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines

shall be required 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.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) 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, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a 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. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts ~~an~~ on ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(6) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or ~~imposed, including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.~~ imposed except that, *subject to subparagraph (B)*, a local agency may require *an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or* that the property be used for rentals of terms longer than 30 days.

(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a 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. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) 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 dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and may shall allow up to 25 percent of the existing multifamily dwelling units.

(D) 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 a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (6) of subdivision (a).

(5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

~~(5)~~ (6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite water treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

~~(6)~~ (7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1,

2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, “impact fee” has the same meaning as the term “fee” is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. “Impact fee” does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family ~~home~~ dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency’s ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department’s findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department’s findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) “Accessory dwelling unit” means an attached or a detached 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 residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) “Accessory structure” means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) “Efficiency unit” has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) “Living area” means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) “Local agency” means a city, county, or city and county, whether general law or chartered.

(6) “Neighborhood” has the same meaning as set forth in Section 65589.5.

(A) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(7) “Nonconforming zoning condition” means a physical improvement on a property that does not conform with current zoning standards.

(8) “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(9) “Proposed dwelling” means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(10) “Public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(11) “Tandem parking” means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(o) This section shall ~~remain in effect only until January 1, 2025, and as of that date is repealed~~ *become operative on January 1, 2025.*

Effective January 1, 2020, Section 65852.22 of the Government Code is amended to read (changes noted in strikeout, underline/italics) (AB 68 (Ting)):

65852.22.

(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:
(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence ~~already built~~ *built, or proposed to be built,* on the lot.
(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.
(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:
(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.
(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.
(4) Require a permitted junior accessory dwelling unit to be constructed within the ~~existing~~ walls of the ~~structure, and require the inclusion of an existing bedroom.~~ *proposed or existing single-family residence.*
(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the ~~structure, with an interior entry to the main living area. A permitted junior accessory dwelling may include a second interior doorway for sound attenuation.~~ *proposed or existing single-family residence.*
(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:
~~(A) A sink with a maximum waste line diameter of 1.5 inches.~~
~~(B)~~ *(A)* A cooking facility with ~~appliances that do not require electrical service greater than 120 volts, or natural or propane gas.~~ *appliances*.
~~(C)~~ *(B)* A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.
(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.
(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine ~~whether~~ *if* the junior accessory dwelling unit ~~is in compliance~~ *complies* with applicable building standards.
(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. ~~A permit shall be issued within 120 days of submission of an application for a permit pursuant to this section.~~ *The permitting agency shall act on the application to create a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing*

single-family dwelling on the lot. If the permit application to create a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.
(d) For ~~the~~ purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.
(e) For ~~the~~ purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.
(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.
(g) If a local agency has not adopted a local ordinance pursuant to this section, the local agency shall ministerially approve a permit to construct a junior accessory dwelling unit that satisfies the requirements set forth in subparagraph (A) of paragraph (1) of subdivision (e) of Section 65852.2 and the requirements of this section.
~~(g)~~ *(h)* For purposes of this section, the following terms have the following meanings:
(1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within ~~an existing~~ *a* single-family ~~structure.~~ *residence*. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.
(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

Effective January 1, 2020 Section 17980.12 is added to the Health and Safety Code, immediately following Section 17980.11, to read (changes noted in underline/italics) (SB 13 (Wieckowski)):

17980.12.

(a) (1) An enforcement agency, until January 1, 2030, that issues to an owner of an accessory dwelling unit described in subparagraph (A) or (B) below, a notice to correct a violation of any provision of any building standard pursuant to this part shall include in that notice a statement that the owner of the unit has a right to request a delay in enforcement pursuant to this subdivision:
(A) The accessory dwelling unit was built before January 1, 2020.
(B) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
(2) The owner of an accessory dwelling unit that receives a notice to correct violations or abate nuisances as described in paragraph (1) may, in the form and manner prescribed by the enforcement agency, submit an application to the enforcement agency requesting that enforcement of the violation be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety.
(3) The enforcement agency shall grant an application described in paragraph (2) if the enforcement determines that correcting the violation is not necessary to protect health and safety. In making this determination, the enforcement agency shall consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal pursuant to Section 13146.
(4) The enforcement agency shall not approve any applications pursuant to this section on or after January 1, 2030. However, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the initial approval of the application pursuant to paragraph (3).
(b) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in Section 65852.2.
(c) This section shall remain in effect only until January 1, 2035, and as of that date is repealed.

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2
AB 587 Accessory Dwelling Units
(Changes noted in underline/italics)

Effective January 1, 2020, Section 65852.26 is added to the Government Code, immediately following Section 65852.25, to read (AB 587 (Friedman)):

65852.26.

(a) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency may, by ordinance, allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

(1) The property was built or developed by a qualified nonprofit corporation.

(2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.

(3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:

(A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies.

(B) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property.

(C) A requirement that the qualified buyer occupy the property as the buyer's principal residence.

(D) Affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.

(4) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.

(5) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.

(b) For purposes of this section, the following definitions apply:

(1) "Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

(2) "Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

CIVIL CODE: DIVISION 4, PART 5, CHAPTER 5, ARTICLE 1
AB 670 Accessory Dwelling Units
(Changes noted in underline/italics)

Effective January 1, 2020, Section 4751 is added to the Civil Code, to read (AB 670 (Friedman)):

4751.

(a) 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 either 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 requirements of Section 65852.2 or 65852.22 of the Government Code, is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on accessory dwelling units or junior accessory dwelling units. For purposes of this subdivision, "reasonable restrictions" means 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 the provisions of Section 65852.2 or 65852.22 of the Government Code.

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 3, ARTICLE 10.6
AB 671 Accessory Dwelling Units
(Changes noted in underline/italics)

Effective January 1, 2020, Section 65583(c)(7) of the Government Code is added to read (sections of housing element law omitted for conciseness) (AB 671 (Friedman)):

65583(c)(7).

Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, "accessory dwelling units" has the same meaning as "accessory dwelling unit" as defined in paragraph (4) of subdivision (i) of Section 65852.2.

Effective January 1, 2020, Section 50504.5 is added to the Health and Safety Code, to read (AB 671 (Friedman)):

50504.5.

(a) The department shall develop by December 31, 2020, a list of existing state grants and financial incentives for operating, administrative, and other expenses in connection with the planning, construction, and operation of an accessory dwelling unit with affordable rent, as defined in Section 50053, for very low, low-, and moderate-income households.

(b) The list shall be posted on the department's internet website by December 31, 2020.

(c) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in paragraph (4) of subdivision (i) of Section 65852.2 of the Government Code.

Attachment 2: State Standards Checklist

YES/NO	STATE STANDARD*	GOVERNMENT CODE SECTION
	Unit is not intended for sale separate from the primary residence and may be rented.	65852.2(a)(1)(D)(i)
	Lot is zoned for single-family or multifamily use and contains a proposed or existing, dwelling.	65852.2(a)(1)(D)(ii)
	The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing dwelling and located on the same lot as the proposed or existing primary dwelling.	65852.2(a)(1)(D)(iii)
	Increased floor area of an attached accessory dwelling unit does not exceed 50 percent of the existing primary dwelling but shall be allowed to be at least 800/850/1000 square feet.	65852.2(a)(1)(D)(iv), (c)(2)(B) & C)
	Total area of floor area for a detached accessory dwelling unit does not exceed 1,200 square feet.	65852.2(a)(1)(D)(v)
	Passageways are not required in conjunction with the construction of an accessory dwelling unit.	65852.2(a)(1)(D)(vi)
	Setbacks are not 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 to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required 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.	65852.2(a)(1)(D)(vii)
	Local building code requirements that apply to detached dwellings are met, as appropriate.	65852.2(a)(1)(D)(viii)
	Local health officer approval where a private sewage disposal system is being used, if required.	65852.2(a)(1)(D)(ix)
	Parking requirements do not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on an existing driveway.	65852.2(a)(1)(D)(x)(I

Attachment 3: Bibliography

ACCESSORY DWELLING UNITS: CASE STUDY (26 pp.)

By the United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

THE MACRO VIEW ON MICRO UNITS (46 pp.)

By Bill Whitlow, et al. – Urban Land Institute (2014)
Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013 to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

SECONDARY UNITS AND URBAN INFILL: A Literature Review (12 pp.)

By Jake Wegmann and Alison Nemirow (2011)
UC Berkeley: IURD
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.

RETHINKING PRIVATE ACCESSORY DWELLINGS (5 pp.)

By William P. Macht. Urbanland online. (March 6, 2015)
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

One of the large impacts of single-use, single-family detached zoning has been to severely shrink the supply of accessory dwellings, which often were created in or near primary houses. Detached single-family dwelling zones—the largest housing zoning category—typically preclude more than one dwelling per lot except under stringent regulation, and then only in some jurisdictions. Bureaucratically termed “accessory dwelling units” that are allowed by some jurisdictions may encompass market-derived names such as granny flats, granny cottages, mother-in-law suites, secondary suites, backyard cottages, casitas, carriage flats, sidekick houses, basement apartments, attic apartments, laneway houses, multigenerational homes, or home-within-a-home.

Regulating ADUs in California: Local Approaches & Outcomes (44 pp.)

By Deidra Pfeiffer
Terner Center for Housing and Innovation, UC Berkeley

Accessory dwelling units (ADU) are often mentioned as a key strategy in solving the nation's housing problems, including housing affordability and challenges associated with aging in place. However, we know little about whether formal ADU practices—such as adopting an ordinance, establishing regulations, and permitting—contribute to these goals. This research helps to fill this gap by using data from the Terner California Residential Land Use Survey and the U.S. Census Bureau to understand the types of communities engaging in different kinds of formal ADU practices in California, and whether localities with adopted ordinances and less restrictive regulations have more frequent applications to build ADUs and increasing housing affordability and aging in place. Findings suggest that three distinct approaches to ADUs are occurring in California: 1) a more restrictive approach in disadvantaged communities of color, 2) a moderately restrictive approach in highly advantaged, predominately White and Asian communities, and 3) a less restrictive approach in diverse and moderately advantaged communities. Communities with adopted ordinances and less restrictive regulations receive more frequent applications to build ADUs but have not yet experienced greater improvements in housing affordability and aging in place. Overall, these findings imply that 1) context-specific technical support and advocacy may be needed to help align formal ADU practices with statewide goals, and 2) ADUs should be treated as one tool among many to manage local housing problems.

ADU Update: Early Lessons and Impacts of California's State and Local Policy Changes (8 p.)

By David Garcia (2017)
Terner Center for Housing and Innovation, UC Berkeley

As California's housing crisis deepens, innovative strategies for creating new housing units for all income levels are needed. One such strategy is building Accessory Dwelling Units (ADUs) by private homeowners. While large scale construction of new market rate and affordable homes is needed to alleviate demand-driven rent increases and displacement pressures, ADUs present a unique opportunity for individual homeowners to create more housing as well. In particular, ADUs can increase the supply of housing in areas where there are fewer opportunities for larger-scale developments, such as neighborhoods that are predominantly zoned for and occupied by single-family homes.
In two of California's major metropolitan areas -- Los Angeles and San Francisco -- well over three quarters of the total land area is comprised of neighborhoods where single-family homes make up at least 60 percent of the community's housing stock. Across the state, single-family detached units make up 56.4 percent of the overall housing stock. Given their prevalence in the state's residential land use patterns, increasing the number of single-family homes that have an ADU could contribute meaningfully to California's housing shortage.

Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle and Vancouver (29pp.)

By Karen Chapple et al (2017)
Terner Center for Housing and Innovation, UC Berkeley

Despite government attempts to reduce barriers, a widespread surge of ADU construction has not materialized. The ADU market remains stalled. To find out why, this study looks at three cities in the Pacific Northwest of the United States and Canada that have seen a spike in construction in recent years: Portland, Seattle, and Vancouver. Each city has adopted a set of zoning reforms, sometimes in combination with financial incentives and outreach programs, to spur ADU construction. Due to these changes, as well as the acceleration of the housing crisis in each city, ADUs have begun blossoming.

Accessory Dwelling Units as Low-Income Housing: California's Faustian Bargain (37 pp.)

By Darrel Ramsey-Musolf (2018)
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In 2003, California allowed cities to count accessory dwelling units (ADU) towards low-income housing needs. Unless a city's zoning code regulates the ADU's maximum rent, occupancy income, and/or effective period, then the city may be unable to enforce low-income occupancy. After examining a stratified random sample of 57 low-, moderate-, and high-income cities, the high-income cities must proportionately accommodate more low-income needs than low-income cities. By contrast, low-income cities must quantitatively accommodate three times the low-income needs of high-income cities. The sample counted 750 potential ADUs as low-income housing. Even though 759 were constructed, no units were identified as available low-income housing. In addition, none of the cities' zoning codes enforced low-income occupancy. Inferential tests determined that cities with colleges and high incomes were more probable to count ADUs towards overall and low-income housing needs. Furthermore, a city's count of potential ADUs and cities with high proportions of renters maintained positive associations with ADU production, whereas a city's density and prior compliance with state housing laws maintained negative associations. In summary, ADUs did increase local housing inventory and potential ADUs were positively associated with ADU production, but ADUs as low-income housing remained a paper calculation.