

**AGENDA ITEM**  
**HISTORIC PRESERVATION REVIEW COMMISSION**  
**APRIL 26, 2018**  
**BUSINESS ITEMS**

**TO** : Historic Preservation Review Commission

**SUBJECT** : **STUDY SESSION DISCUSSION: ACCESSORY DWELLING UNIT REGULATION AMENDMENTS**

**EXECUTIVE SUMMARY:**

On March 22, 2018 the Historic Preservation Review Commission conducted a study session to review and comment on proposed amendments to the Accessory Dwelling Unit regulations (Benicia Municipal Code Section 17.70.060 and ancillary buildings in the Downtown Mixed Use Master Plan, DMUMP). Following discussion, the commissioners asked staff to do additional research and continue the discussion at the April 26 HPRC meeting.

After the conclusion of Commission discussion on April 26, the proposed amendments will be revised and scheduled for a public hearing. Public notice will be provided in advance of the public hearing. The zoning changes are proposed because State law regarding Accessory Dwelling Units (ADUs) changed in 2017 and 2018.

**RECOMMENDATION:**

Accept public comment and provide feedback to staff regarding height, bulk and design standards for accessory dwelling units.

**OVERVIEW:**

In 2016, State law changed and required local agencies to allow second units on all residentially-zoned lots without requiring discretionary review. In 2017, State law further limited local agencies' zoning controls for second units. These changes reflect the California State Legislature's finding that Accessory Dwelling Units (ADUs) are an essential component of California's housing supply that provide additional rental stock and housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.

The purpose of the HPRC study session is to evaluate the proposed amendments which, in combination with State statute, will result in a change to the type of review applied to new accessory dwellings and certain alterations to existing structures. The State requires all ADUs to be approved through a ministerial permit (without the exercise of individual judgment or discretion), even if they are on the same property as a historic structure or would be attached to a historic structure. This means that accessory dwelling units in the historic district, whether they are new detached buildings, attached additions, or conversions of existing structures, would not

be subject to approval through Design Review. They will be approved if they can meet “checklist-type” criteria. The development and design standards that are established through this amendment will be an important avenue to ensure the compatible development of new accessory dwelling units.

### **BACKGROUND:**

An overarching theme of the State law is that local regulations shall not be “*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*” (Government Code Section 65852.150). The City is obligated to comply with the State laws for ADUs.

In 2016, the State passed legislation (SB1069, AB2299, and AB2406) revising how cities and counties can regulate ADUs. These changes, which became effective in 2017, streamline the permit process to construct a new accessory dwelling unit (ADU) or to convert existing structures to an ADU. The most significant changes relate to ADU size, building conversions, parking (spaces required and allowed location), process, and, for cities such as Benicia, fire sprinkler requirements and water and sewer connection fees. On January 1, 2018, additional new regulations (SB 229 and AB494) took effect that clarify State regulations including the requirements that ADUs be allowed in all zoning districts that allow single-family uses and reducing parking requirements.

The Planning Commission conducted a study session regarding the ADU regulations on March 8, 2018. During the meeting, the Commission heard a presentation regarding the status of state law and accepted public comment. Feedback and public comment related to the following issues:

- Requirements for owner-occupancy
- Height of detached accessory dwelling unit
- Appropriate maximum floor area for accessory dwelling units
- Setbacks for accessory dwelling units in a downtown setting
- Renter registration
- Conversion of historic buildings
- Required parking
- Contextual concerns regarding historic neighborhoods
- Maintenance
- Designs standards

The Historic Preservation Review Commission (HPRC) conducted a study session on March 22, 2018 to focus on standards that ensure compatibility in the residential setting including height, bulk and design standards. During the study session the HPRC heard public comment and provided feedback to staff on the following topics:

- Building height to accommodate second story ADU in detached structure
- Roof pitch
- Floor area
- Building form and detailing
- Building additions
- Placement of ADUs, both detached and building additions

- Lot coverage flexibility for lots smaller than 4,000 square feet.

Following some discussion, the HPRC requested that staff do some additional research as summarized below:

1. *Contact the California Office of Historic Preservation (OHP) to inquire about guidance for jurisdictions.* Staff contacted the OHP in April, 2018. While OHP staff was familiar with the general changes to state statute regarding ADUs, they stated that no guidance has been developed nor any advice prepared to assist jurisdictions in this matter.
2. *Research the meaning of “burdensome” with regard to ADUs.* Staff contacted the Department of Housing and Community Development and consulted with the City Attorney. The term “burdensome” is not defined and is included in a statement of intent. The City should consider the cumulative effect of regulations associated with ADUs to determine whether they are unnecessarily burdensome or otherwise overwhelm the feasibility of a homeowner to provide an ADU.
3. *Research applicability of the ADU regulation to the Town Core District.* As drafted, the proposed regulations would permit an ADU on lots within the Downtown Mixed Use Master Plan area, including the Town Core (TC) District. The TC District permits an ancillary building; however, the use regulations of the TC District only allow residential use on upper floors. To construct an ADU in this location would require that some portion of the principal building function as a dwelling unit and also a deed restriction requiring owner occupancy of either the principal or accessory dwelling.

### **Changes Needed to Comply with State Law**

The proposed amendments will comply with State regulations regarding accessory dwelling units. While there are many detailed elements to the regulations, key components will affect the City’s local ordinance:

- *Location:* One ADU per lot must be permitted in single family and multiple family residential districts and on lots that contain an existing single family dwelling.
- *Ministerial review:* ADUs must be approved through a ministerial process. This means that if a proposed ADU meets the City’s objective standards, it must be approved. The City may conduct an advisory design review but is not allowed to require any type of discretionary approval for an ADU that complies with objective standards.
- *Conversion of Existing Structure:* A local jurisdiction must approve an application to create an ADU in a single-family residential zone if the unit is contained in an existing residence or accessory structure. The only standards that may be applied to review of the ADU are building code requirements. No zoning standards, including design standards, shall be applied to the conversion of an existing structure.
- *Parking:* The City may require only one parking space per ADU and must allow required parking to be tandem or in setback areas, unless there are fire and life safety impediments. Additional parking for an ADU shall not be required if the ADU is:
  - Within ½ mile of public transit
  - Within a historic district
  - Part of an existing primary residence or converted existing accessory structure

- In an area where on-street parking permits are required but not offered to the ADU occupant
- Within one block of a car-share area.

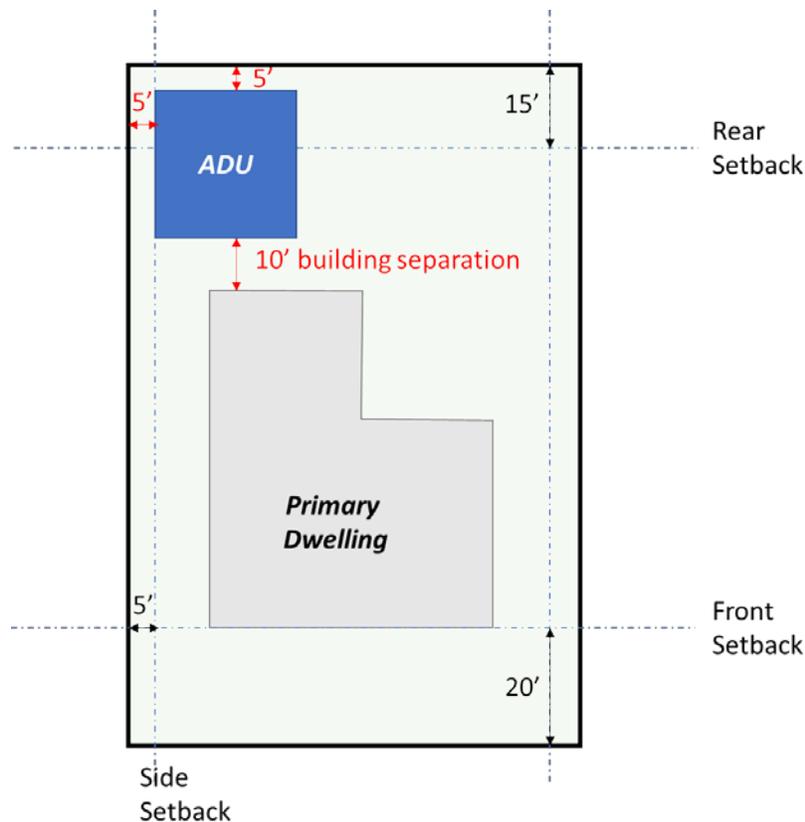
The draft amendments, which were presented to the Planning Commission and HPRC in March, are included as Attachments 1 and 2 of this staff report. They will be revised following completion of the study session in preparation for public hearings beginning in May, 2018.

## DISCUSSION TOPICS

### *Detached ADU Placement*

The proposed ADU regulations would require that detached accessory dwellings be located behind the primary dwelling. During the March 22 study session, commissioners discussed the location of ADUs and those commenting expressed a general interest in allowing freedom to place an ADU on the side portion of a rear yard in order to allow for usable yard area. The applicable setbacks for an ADU would be five feet (5') from a rear or side property line and ten (10) feet from any other building on the site.

Figure 1: Detached ADU Placement

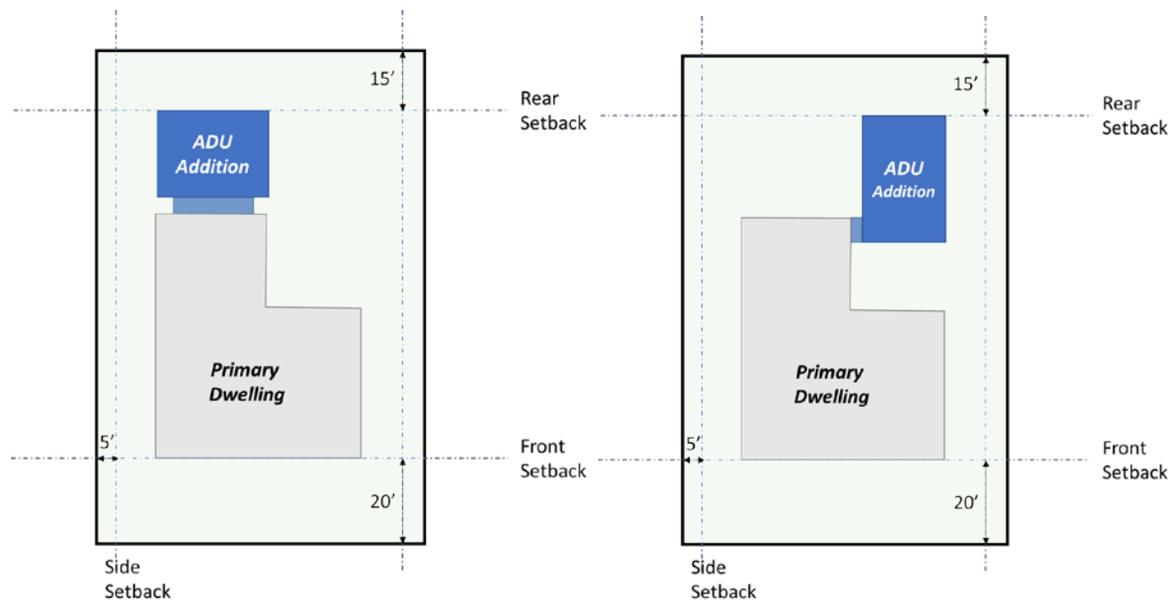


Staff recommends that the language regarding placement of detached ADUs remain as currently proposed.

### *Attached ADU Placement*

Because the city must allow for ministerial review of ADUs even when built as an addition to an existing dwelling, it is important to consider the placement of attached ADUs in the historic districts. The draft regulations state that ADUs must be placed behind the primary dwelling but do not provide additional guidance. Feedback from the March study session indicated a strong preference to locate ADUs in a rear location that would not result in impacts to the character of the historic district. Based upon this feedback and the guidance of the draft Design Guidelines (p.84), staff recommends that the standards be revised to specify that an attached ADU shall not extend beyond the side wall of the house and shall be built with a “connector” to distinguish it from the primary dwelling.

Figure 2: Attached ADU Placement



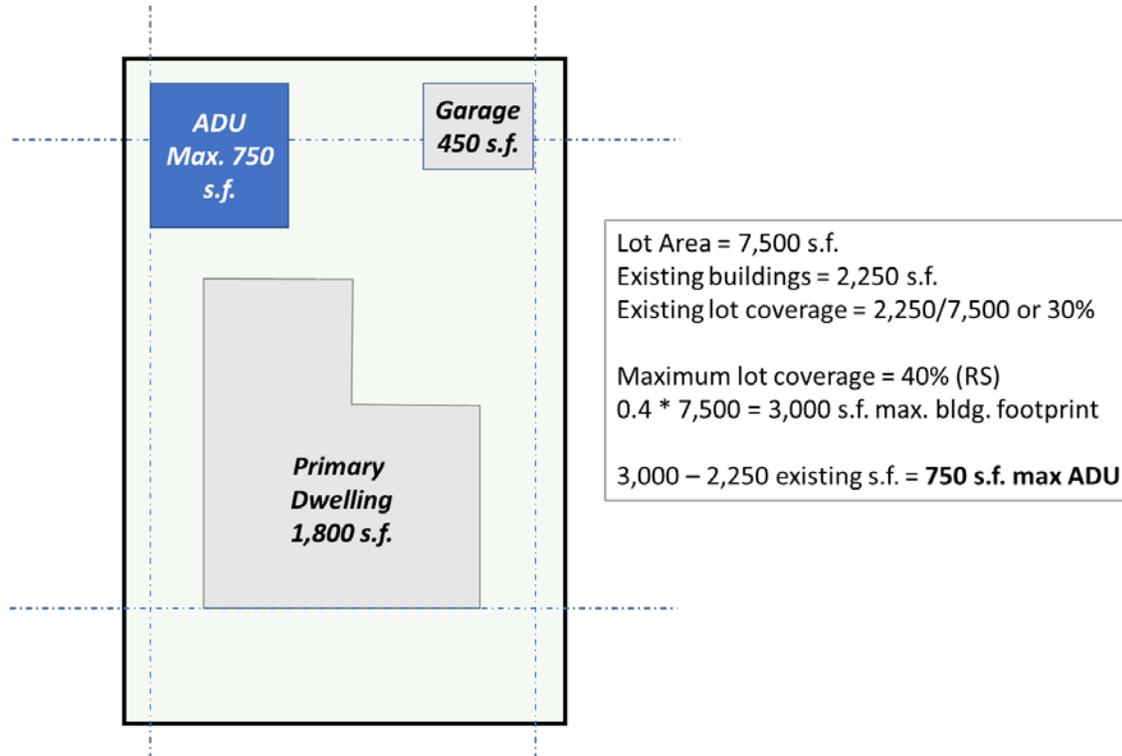
### *Detached ADU Size*

The draft ordinance establishes a maximum floor area for detached ADUs of 1,000 square feet or the size of the principal building, whichever is less. The upper limit of the ADU floor area is consistent with the Downtown Mixed Use Master Plan and is an increase of 200 square feet over the current Benicia Municipal Code (current maximum size is 800 square feet). The lower limit is consistent with the current ADU regulations of Benicia Municipal Code. During the study session, commissioners commented that a size range between 800 and 1,000 square feet is appropriate for current living standards.

As noted in the study session, the permitted size of an ADU may additionally be controlled by the required yards, maximum lot coverage and minimum landscaping standards of the zoning district in which it is located. For example, a hypothetical 7,500 square foot lot that contains a single-family home with a footprint of 1,800 square feet and a detached garage with a footprint of 450 square feet would have an existing lot coverage of 30%. The RS District establishes a

maximum lot coverage of 40%; therefore, the maximum allowed footprint of the ADU would be 750 square feet.

Figure 3: Lot Coverage



#### *Attached ADU Size*

The Benicia Municipal Code currently limits the floor area of an accessory dwelling unit to 800 square feet regardless of whether it is attached or detached from the primary dwelling. The draft regulations would amend this standard to provide that an attached ADU may be 1,200 square feet in floor area or 50% of the existing floor area, whichever is less.

During the Planning Commission study session, some members of the public commented that this standard is burdensome for owners of small homes and cottages, where the 50% floor area limitation constrains the potential size of the ADU. In consideration of this, staff recommends the following revision to the draft language:

#### D. Development Standards.

##### 1. Floor area

- a. Attached units. The floor area of an attached accessory dwelling unit shall not exceed 50 percent of the floor area of the primary dwelling unit or 1,200 square feet, whichever is less. However, if the primary dwelling has an existing floor area of less than 1,200 square feet, an attached accessory dwelling unit may have a maximum floor area of 600 square feet subject to compliance with all other zoning standards.

### *Detached ADU Height*

The Zoning Ordinance currently allows detached ADUs on the ground floor only, or in a 1.5 story ancillary building within the Downtown Mixed Use Master Plan area. Through the Planning Commission and HPRC study sessions, the public and commissioners expressed interest in allowing detached ADUs to occupy second floor space, noting the opportunity more efficient building design and use of land.

Currently, both the DMUMP and the Benicia Municipal Code establish a maximum accessory building height of 15 feet; except, that a 20' height may be allowed in the RS District if the pitch matches that of the principal residence and wall height does not exceed 12 feet at the eaves. Commissioners and the public commented that a 15 foot building height is not adequate to accommodate two stories of usable space with an attractive roof pitch. Commissioners discussed options to allow for a taller building height, including the allowance for increased roof height when a more attractive roof pitch is provided.

Staff recommends that the standard for detached accessory buildings and ADUS be revised to allow building height as follows. This approach would allow for one a half story structures with a roof pitch that helps to minimize the appearance of bulk.

| Roof Pitch            | Maximum Wall Height | Maximum Peak Height |
|-----------------------|---------------------|---------------------|
| Below 4:12            | 12 feet             | 15 feet             |
| Between 4:12 and 6:12 | 12 feet             | 18 feet             |
| Greater than 6:12     | 12 feet             | 20 feet             |

As noted previously, Benicia is not allowed to require additional off-street parking for accessory dwelling units in most areas of the city (e.g., in historic districts or within ½ mile of transit). Further, multiple accessory buildings on a lot result in inefficient use of land and constraints related to lot coverage. Accessory dwelling standards that allow for efficient building design, such as a “carriage house” type with ground floor parking and upper story dwelling, help to maintain open space within the neighborhood and encourage property owners to retain parking on-site, and thereby reducing the demand for parking on residential streets.

### *Attached ADU Height*

The draft regulations state that an attached ADU shall conform to the height standards of the district in which it is located (i.e., 30 feet in the RS District and 35 feet in the RM District), subject to compliance with the design standards.

In a historic district, an attached accessory dwelling unit would not be allowed to exceed the height of the primary dwelling. Staff further recommends that rooftop and second story additions for ADUs be prohibited in the historic districts.

### *ADU Design Standards*

At the March study session, commissioners and community members discussed the design standards. One commissioner commented that the design standards should encourage a “cottage” appearance in the historic district including more specific standards for windows, gutters, eave depth and roof pitch. Commissioners also commented on a preference to allow for design flexibility. Based upon the commission’s discussion, staff proposes the following changes to the design standards:

1. The exteriors of accessory dwelling units shall be compatible with existing development in the immediate neighborhood by using building materials, window styles, roof slopes, colors, and exterior finishes that are the same or visually similar to those on the primary dwelling unit. Reflective metal finishes are prohibited.
2. In a mixed use district, the accessory dwelling unit shall conform to the standards of the Downtown Mixed Use Master Plan form-based code.
3. All utility distribution lines serving an accessory dwelling unit shall be placed underground as provided in BMC Section 17.70.320.
4. For a detached accessory dwelling unit, no deck or platform shall exceed thirty inches above grade.
5. For lots ~~containing a contributing or landmark building~~ in the H historic overlay district, an accessory dwelling unit shall conform to the following additional requirements:
  - a. Detached accessory dwellings and building additions shall be located behind the primary dwelling and shall not exceed the height or footprint of the primary dwelling.
  - b. An attached accessory dwelling unit shall not result in a rooftop addition or any increase in building height.
  - c. A building addition for an attached accessory dwelling unit shall be separated by a connector that is offset at least 3 feet from the parallel side or rear building wall to distinguish it from the primary dwelling. A building addition for an attached ADU shall not extend beyond the side wall of the primary dwelling.
  - d. Exterior building materials shall be horizontal wood or fiber cement (e.g., Hardi-board) siding, ~~or~~ shingles or trim. However, if stucco is the predominant exterior wall finish for the primary residence, then a stucco exterior ~~shall~~ may be applied to the accessory dwelling. Synthetic stucco (EIFS or DryVit) is prohibited.
  - e. The exterior walls of an accessory dwelling shall utilize same base and trim colors as the primary residence.
  - f. The roof shall utilize the same material and color as the primary residence and shall match the primary residence in overall appearance.
  - g. Gutters shall not be constructed of plastic or PVC materials and shall apply a similar profile to the primary residence.
  - h. Windows shall be vertically composed with a height to width ratio of 8:5 or 2:1 or shall match the proportions of the primary dwelling.
  - i. Window pane divisions shall be true or simulated divided lites (muntins applied to both the interior and exterior of the glass).
  - j. The Gable end of the roof shall be oriented in a direction that is parallel to the side property line in order to minimize shadow effects on the adjoining lot.

- k. Dormers shall be set back a minimum of three (3) feet from the side wall below and shall not cumulatively occupy more than thirty percent (30%) on any side of the building.
- l. Window frames shall be painted or factory-finished. No metallic finishes such as silver or bronze anodized aluminum are permitted.
- m. The roof pitch for an accessory dwelling unit shall be ~~2:12~~ 4:12 or greater. However, if the primary residence has a predominantly flat roof, a similar pitch may be employed on the accessory dwelling.

In establishing design standards, the city must ensure that all standards are objective, that the standards are not unnecessarily burdensome or unreasonably restrictive, and that they do not result in unintended consequences. Only the Building Code may be applied to conversion of an existing structure such as a garage, barn or carriage house, even if the structure is historic or potentially historic. This means that Design Standards would not apply to conversion of existing structures.

Finally, as noted earlier in this report, the City of Benicia may establish an advisory type of design review procedure; however, it would not be binding on the applicant as permits for ADUs must be issued through a ministerial process. Such a procedure would not be applicable to conversion of existing buildings, and is likely to result in additional workload for city staff and the commission. Staff does not recommend requiring an advisory design review for accessory dwelling units in the historic district.

*Considerations for Constrained Parcels*

Based upon public feedback at the Planning Commission and HPRC study sessions, staff proposes the following conceptual considerations for constrained parcels . Based upon feedback, these will be incorporated in to the amended draft ordinance for future public hearings.

Lot Coverage: For lots less than 6,000 square feet, allow a 5% increase in lot coverage over the base zoning allowance (RS establishes a maximum lot coverage of 40%; RM establishes a maximum lot coverage of 45%) *if* such increase is necessary to accommodate additional floor area for a new accessory dwelling unit and subject to compliance with all other zoning standards.

**GENERAL PLAN:**

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| <b>General Plan</b> | Goal 2.1 Preserve Benicia as a small-sized city.<br>➤ Policy 2.1.1: Ensure that new development is compatible with adjacent existing development and does not detract from Benicia’s small town qualities and historic heritage. |
|                     | Goal 3.7: Maintain and reinforce Benicia’s small-town visual characteristics.<br>➤ Policy 3.7.1: Ensure that new development is compatible with the surrounding architectural and neighborhood character.                        |

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| <p><b>Housing<br/>Element</b></p> | <p>Goal 1: Benicia shall be an active leader in attaining the goals of the City's Housing Element.</p> <ul style="list-style-type: none"><li>➤ Policy 1.04: The City will review and revise regulatory standards necessary to comply with State Housing law.<ul style="list-style-type: none"><li>▪ Program 1.10: To encourage the development of second units, amend the Zoning Ordinance for second units (accessory dwelling units) and reduce fees. Modifications to City standards and procedures should include:<ul style="list-style-type: none"><li>• Eliminate or reduce the 6,000 square foot minimum parcel size for second units outside the Historic Districts (for inside Historic Districts see Program 1.11);</li><li>• Allow units above or adjacent to the garage of a primary housing unit;</li><li>• Reduce parking standards for lots with second units. For example:<ul style="list-style-type: none"><li>○ Allow exceptions to parking requirements for second units up to 400 square feet;</li><li>○ Allow for on-street parking spaces adjacent to the lot to count towards 50 percent of the parking requirement;</li><li>○ Eliminate the covered parking requirement for the primary residence, if an accessory dwelling unit is provided;</li><li>○ Allow one of the required parking spaces in the front or exterior yard setback; and</li><li>○ Allow tandem parking to meet the parking requirement for the primary residence and the accessory dwelling as long as both spaces are behind the front facade plane and do not create fire or safety hazards.</li></ul></li><li>• Investigate additional reductions to sewer and water connection fees for second units; and</li><li>• Reduce or waive planning and building fees for affordable second units.</li></ul></li><li>▪ Program 1.11: To expedite the approval process for second units, the City will investigate the feasibility of developing second unit prototype or model plans for homeowners to use. It may be determined that another prototype would be necessary for historic districts. Use of these plans would reduce costs to homeowners, decrease the time for the approval process, and, in historic districts, help ensure preservation of the historic character is maintained. If such plans were approved for application in the historic districts,</li></ul></li></ul> |
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|  | the City should consider reducing or eliminating the 6,000 square foot minimum parcel size in the R Zoning District. |
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**CEQA:**

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| <b>CEQA<br/>Analysis</b> | The project is exempt from environmental review under California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15282(b) that exempts the adoption of an ordinance regarding second units in a single family or multifamily residential zone to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code. The additional clean-up amendments are exempt pursuant to Section 15061(b), the “General Rule”, which states that a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the project would have a significant effect on the environment. The proposed clean-up amendments merely clarify and align existing Code and would not alter the physical environment in any manner that would result in a significant effect on the environment. |
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**CONCLUSION:**

The purpose of this study session is for the Historic Preservation to provide feedback to staff on draft amendments for accessory dwelling units pertaining to design. Comments from the HPRC and Planning Commission study sessions will be evaluated for a future public hearing on adoption of the amendments, scheduled for Spring, 2018.

Attachments:

1. Draft Amendments (clean)

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