



Staff Report

File #: REPORT 19-0814, Version: 1

Honorable Chairman and Members of the Hermosa Beach Planning Commission

Regular Meeting of December 9, 2019

Zone Text Amendment 19-2, a request to amend the Hermosa Beach Municipal Code, related to regulations for Accessory Dwelling Units (ADUs), as mandated by State law, and determination that the project is statutorily exempt from the California Environmental Quality Act (CEQA)

Recommended Action:

Adopt the attached resolution recommending the City Council approve Zone Text Amendment 19-2, thereby amending Section 17.04.040, Chapter 17.21, and Section 17.44.020 of the Hermosa Beach Municipal Code regarding Accessory Dwelling Units and determine that the project is categorically exempt from the California Environmental Quality Act (CEQA).

Background:

An accessory dwelling unit (ADU) is an attached or detached residential dwelling unit, which provides complete independent living facilities for one or more persons. ADUs include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same lot as the primary residence. Like ADUs, junior accessory dwelling units (JADU) provide an independent living facility; however, JADUs are limited to 500 square feet in size and can share bathrooms with the primary dwelling on the site. In the City of Hermosa Beach, ADUs and JADUs are permitted in all residential zones (provided the property is improved with a single-family residence and meets certain lot requirements) and are regulated in the City of Hermosa Beach through Municipal Code Chapter 17.21. The existing rules were adopted in 2018, as a result of new state legislation that required the city to adopt an ordinance to implement the new state policy to create more housing opportunities through creation of ADUs. This was one of many bills that year aimed at addressing the statewide housing crisis.

In 2019, the California Legislature adopted another group of housing bills, still aimed at addressing the housing crisis. This year, the legislature approved, and the Governor signed, SB 13 (Chapter 653, Statutes of 2019), AB 68 (Chapter 655, Statutes of 2019), and AB 881 (Chapter 659, Statutes of 2019) into law that, among other things, amended Government Code section 65852.2 and 65852.22 to impose new limits on the city to regulate ADUs and JADUs. While three similar ADU bills were adopted, only the bill with the highest chapter number goes into effect and thus, we look at AB 881 for the governing language ("New ADU Law"). The State Legislature intends to reduce regulatory barriers and costs, streamline approval, and expand the potential capacity for ADUs in response to California's housing shortage. These changes will assist the City in meeting its allotment for the upcoming RHNA cycle.

Failure to comply with Government Code sections 65852.2 and 65852.22 (as amended) as of January 1, 2020 renders the City's ordinance regulating ADUs and JADUs null and void, thereby

limiting the City to the application of the few default standards provided in Government Code sections 65852.2 and 65852.22 for the approval of ADUs and JADUs, unless and until a compliant ordinance is adopted.

Analysis:

The “New ADU Law” eliminates minimum lot sizes, allow ADUs in multiple-family residential projects, restrict parking limitations, increases the maximum allowable size of ADU’s, decreases setbacks, eliminate replacement parking requirements when a garage is converted, and eliminates owner-occupancy requirements. A summary of the major changes is as follows:

Accessory Dwelling Units Development Standards	
Standard	Hermosa Beach Municipal Code
Location	Existing: Residentially zoned property improved with a single-family residence. Proposed: Any property improved with a single-family, multiple-family, or mixed-use development.
Number of Units Allowed	Existing: On single-family developed properties, one ADU or one JADU. Not permitted on multiple-family developed properties. Proposed: On single-family developed properties, one ADU and one JADU. On multiple-family and mixed-use developed properties, up to 25% of the existing units.
Minimum Lot Size	Existing: 4,000 square feet. Proposed: No Minimum lot size is required.
Maximum Unit Size	Existing: ADU = 640 square feet; JADU = 500 square feet. Proposed: ADU = 850 square feet for studios and one-bedroom units and 1,000 s.f. for two-bedroom units; JADU = 500 square feet.

Setbacks	<p>Existing: Per zoning code requirement for the base zone.</p> <p>Proposed: For conversion and replacement of existing structures, no additional setback is required, beyond what is currently provided. Front setbacks are per the zoning code requirement for the base zone. Side and rear setbacks are per the zoning code requirement for the base zone or four feet, whichever is less.</p>
Height	<p>Existing: Per zoning code requirement for the base zone.</p> <p>Proposed: For attached units, per zoning code requirement for the base zone. For detached units, 16 feet.</p>
Parking	<p>Existing: For JADU, no parking is required. For ADU, one space per unit, except if property is: 1) is located within one-half (1/2) mile of a major transit stop; 2) is located within one (1) block of a designated car share pick up and drop off location; 3) is located within an architecturally and historically significant historic district; 4) is proposed to be converted from the existing space entirely within the primary dwelling unit or an existing accessory structure; or 5) is located in a permit parking area where on-street parking permits are required, but not offered to the occupant(s) of the accessory dwelling unit.</p> <p>Proposed: For JADU, no parking is required. For ADU, one space per unit, except if property is: 1) is located within one-half (1/2) mile walking distance of public transit; 2) is located within one (1) block of a designated car share pick up and drop off location; 3) is located within an architecturally and historically significant historic district; 4) is proposed to be converted from the existing space entirely within the primary dwelling unit or an existing accessory structure; or 5) is located in a permit parking area where on-street parking permits are required, but not offered to the occupant(s) of the accessory dwelling unit.</p>
Garage Conversions	<p>Existing: When garage, carport, or covered parking is replaced/converted to ADU, parking shall be replaced in any configuration on same lot.</p> <p>Proposed: If garage, carport, or covered parking is replaced/converted to ADU, no replacement parking is required.</p>

Owner-Occupancy Requirement	<p>Existing: For ADU, the property owner shall live in either the primary residence or the ADU. For JADU, the property shall live in the primary residence.</p> <p>Proposed: For ADU, the property owner shall live in either the primary residence or the ADU. For JADU, the property shall live in the primary residence. However, this rule is suspended for ADUs created between 1/1/2020 and 1/1/2025, which no owner-occupancy requirements are required.</p>
Approval Process	<p>Existing: Administrative Permit.</p> <p>Proposed: Plan check and building permit only.</p>

In order to preserve as much local authority as allowed under the law, the City needs to amend the Zoning Code to bring the City into compliance with the “New ADU Law.” Text Amendment 19-2 amends Chapter 17.21 of the Hermosa Beach Municipal Code for the construction of ADUs and JADUs to comply with the amended provisions of Government Code sections 65852.2 and 65852.22. As previously noted, failure to comply with the “New ADU Law” renders the City’s ordinance regulating ADUs and JADUs null and void, thereby limiting the City to the application of the few default standards provided in Government Code sections 65852.2 and 65852.22. The approval of ADUs and JADUs based solely on the default statutory standards, without local regulations governing height, setback, landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety. As such, staff recommends that the Planning Commission hold a public hearing and recommend approval of the below amendments to the HBMC, as required under state law.

The following new definitions will be added to the alphabetical list of definitions in Section 17.04.040:

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

“Complete independent living facilities” means 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.

“Nonconforming zoning condition” means a lawfully established physical improvement on a property that does not conform to current zoning standards.

“Passageway” means a pathway that is unobstructed clear to the sky.

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

“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 (applicable to Chapter 17.21

only).

The proposed text amendment would revise Chapter 17.21 in its entirety to read as follows:

Chapter 17.21 Accessory Dwelling Units

17.21.010 Purpose

The purpose of this section is to allow and regulate accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in compliance with California Government Code sections 65852.2 and 65852.22.

17.21.020 Effect of Conforming.

An ADU or JADU that conforms to the standards in this chapter will not be:

- A. Deemed to be inconsistent with the city's general plan and zoning designation for the lot on which the ADU or JADU is located.
- B. Deemed to exceed the allowable density for the lot on which the ADU or JADU is located.
- C. Considered in the application of any local ordinance, policy, or program to limit residential growth.

17.21.020 Approvals

Provided an ADU and/or JADU complies with all of the requirements set forth in this chapter, applications for ADUs and JADUs may submit directly to Planning and Building plan check, including payment of all required plan check fees. No other administrative or discretionary permit is required.

17.21.030 ADUs and JADUs

ADUs and JADUs shall be permitted in any zone that allows residential development, except the Mobilehome Park Development (MHP) District. The following is the maximum number of ADUs and/or JADUs allowed on a residential property:

- A. Converted on Single-Family Lot: Only one ADU or JADU on a lot with a proposed or existing single-family dwelling on it. The ADU or JADU shall also comply with the following:
 - 1. Is either: (a) within the space of a proposed single-family dwelling; (b) within the existing space of an existing single-family dwelling; or (c) within the existing space of an accessory structure, plus up to 150 additional square feet if the expansion is limited to accommodating ingress and egress.
 - 2. Has exterior access that is independent of that for the single-family dwelling.
 - 3. Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes.

- B. Detached on Single-Family Lot: One detached, new-construction ADU on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established on the lot pursuant to HBMC 17.21.030(A)), if the detached ADU satisfies the following limitations:
 - 1. There shall be no more than one ADU and one JADU located on the property.
 - 2. The ADU complies with all applicable building and fire codes.
- C. Converted on Multiple-Family Lot: Multiple ADUs may be permitted on lots with existing or proposed multiple-family dwellings, subject to the following:
 - 1. The number of ADUs allowed shall not exceed 25 percent of the existing multiple-family dwellings on the property. For the purposes of calculating the number of allowable ADUs, the following shall apply:
 - a. Previously approved ADUs shall not count towards the existing multiple-family dwellings.
 - b. Fractions shall be rounded down to the next lower whole number of dwelling units, except that a least one ADU shall be allowed.
 - 2. ADU's shall comply with all applicable building and fire codes.
- D. Detached on Multiple-Family Lot: Up to two detached ADUs may be permitted on a lot that has an existing multiple-family dwelling, subject to the following:
 - 1. The total number of ADUs on the property, including the conversion of spaces as permitted pursuant to HBMC 17.21.030(C) does not exceed two. For the purpose of this chapter, multiple-family dwellings approved and built as a single complex shall be considered one lot, regardless of the number of parcels.
 - 2. ADU's shall comply with all applicable building and fire codes.

17.21.040 Development Standards

Except as modified by this chapter, ADUs and/or JADUs shall conform to all requirements of the underlying zoning district, any applicable overlay district, and all other applicable provisions of this code.

- A. Lot Area. There shall be no minimum lot area required in order establish an ADU or JADU.
- B. Height.
 - 1. Detached ADUs shall not exceed one-story and a height of sixteen (16) feet.
 - 2. Attached ADUs shall not exceed the height, as permitted in the base zone.

- C. Setbacks. ADUs and JADUs shall comply with all setback requirements applicable to the zoning district, except as noted below:
1. For conversion of existing enclosed floor area, garage, or carport, no additional setback is required beyond the existing provided setback.
 2. For replacement of an existing enclosed structure, garage, or carport, no additional setback is required beyond the existing provided setback. This provision shall only apply to ADUs and JADUs that are replacing an existing structure in the exact same location, size and height.
 3. Newly constructed detached ADUs shall meet the minimum setback, as required by the base zone or four (4) feet, whichever is less.
- D. Unit Size
1. The maximum size of an ADU is 850 square feet for a studio or one-bedroom unit, and 1,000 square feet for a unit with two bedrooms. No more than two bedrooms shall be allowed.
 2. An attached ADU that is created on a lot with an existing or proposed single-family dwelling is further limited to 50 percent of the floor area of the existing primary dwelling.
 3. Application of 17.21.040(D)(2) and other development standards, such as lot coverage or open space, might further limit the size of the ADU, but in no case shall these requirements limit the ADU to be less than 800 square feet.
 4. The maximum size of a JADU shall be 500 square feet.
 5. The minimum size of an ADU or JADU shall be at least that of an efficiency unit.
- E. Fire Sprinklers. Fire sprinklers are required in an ADU only if sprinklers are required in the primary residence.
- F. Passageway. No passageway shall be required in conjunction with the construction of an ADU and/or JADU. For the purposes of this chapter, "passageway" shall mean a pathway that is unobstructed, clear to the sky, and extends from the right-of-way to one entrance of the ADU and/or JADU.
- G. Roof Deck. Roof decks shall not be permitted on an ADU or JADU.
- H. Kitchens
1. ADU. ADUs shall have a kitchen, as required by the Building Code, which shall include a kitchen sink, cooking device, refrigeration, food preparation counter, and storage cabinets.

2. JADU. JADUs shall include an efficiency kitchen, as required by the Building Code, which shall include all of the following:

- a. A sink with a maximum waste line diameter of one and one-half (1.5) inches;
- b. A cooking facility with appliances that do not require electrical service greater than one hundred twenty (120) volts, or natural or propane gas; and
- c. Food preparation counter(s) and storage cabinet(s).

I. Parking. Parking shall comply with the requirements of Chapter 17.44 (Off-Street Parking) of this code, except as modified below:

1. No parking shall be required for JADUs.
2. A minimum of one parking space shall be provided for each ADU.
 - a. The parking space(s) may be provided as part of two or more spaces lined up behind one another
3. Exceptions. No parking for the ADU is required in the following situations:
 - a. The ADU is located within one-half mile walking distance of public transit. For purposes of this chapter, "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.
 - b. The ADU is located within an architecturally or historically significant historic district.
 - c. The ADU is converted as part of a proposed or existing primary residence or an accessory structure.
 - d. When on-street parking permits are required but not offered to the occupant of the ADU.
 - e. When there is an established car share vehicle stop located within one block of the ADU. For the purposes of this section, "car-share vehicle" shall mean part of an established program intended to stay in a fixed location for at least ten (10) years and is available to the public.
4. No Replacement. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of, or converted, to an ADU or JADU, those off-street parking spaces are not required to be replaced.

J. Storage facilities shall include an area sufficient to accommodate refuse containers (trash,

recycle, and green waste) for all units on the site. Such storage containers shall be provided in any one (1) of the following ways:

1. Attached to the outside of the structure on privately owned property, enclosed on all sides by suitable screening of not less than four (4) feet in height or similar type of structure so that the same shall not be open to public view, one (1) side of which may be opened as a gate. Such storage facilities shall have a concrete, asphalt or similar base and shall be adequately ventilated; or
 2. Constructed within the building structure; or
 3. A separate structure enclosed on all sides by suitable screening of not less than four (4) feet in height or similar type of structure so that the same shall not be open to public view, one (1) side of which may be opened as a gate. Such storage facilities shall have a concrete, asphalt or similar base and shall be adequately ventilated; or
 4. Within an accessory building such as a garage or storage shed, or within a primary structure in a service porch-type area.
- K. Design. Exterior finished materials on the ADU or JADU shall match the exterior finished material for the primary dwelling unit.
- L. Utility Connection.
1. Converted single-family dwellings. An ADU or JADU permitted pursuant to Section 17.21.030(A) of this chapter shall not be required to provide a separate utility connection (water, sewer, natural gas, electric) between the ADU or JADU and the utility.
 2. All others. ADUs or JADUs, except those permitted pursuant to Section 17.21.030 (A) of this chapter, shall provide a separate utility connection (water, sewer, natural gas, electric) between the ADU or JADU and the utility.
- M. Open Space. Unless restricted pursuant to Section 17.21.040(D)(3), the property in which the ADU or JADU is located upon, shall comply with the open space requirements of the base zone.

17.21.050 Historic Resource Preservation

Notwithstanding any provision of this chapter, all requirements set forth in Chapter 17.53 (Historic Resources Preservation) of this code shall apply.

17.21.060 Short-Term Rentals

Short-term rentals shall be prohibited in all ADUs and JADUs, as set forth in Sections 17.08.025, 17.10.015, 17.12.015, 17.14.015, 17.16.015, 17.18.025 and 17.20.015.

17.21.070 Owner-Occupancy

- A. For all ADUs create before January 1, 2020, a natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or ADU, as the person's legal domicile and permanent residence.
- B. For any ADU that is created on or after January 1, 2020, but before January 1, 2025, there shall be no owner-occupancy requirement.
- C. For all ADUs create on or after January 1, 2025, a natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or ADU, as the person's legal domicile and permanent residence.
- D. For all JADUs, a natural person with legal or equitable title to the property must reside on the property, in the primary dwelling unit, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement of this paragraph does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.

17.21.080 No Separate Conveyance

An ADU or JADU may be rented, but no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all of the dwellings (in the case of a multiple-family lot).

17.21.090 Deed restriction and Recordation Required

Prior to issuance of a building permit for an ADU or JADU, a deed restriction shall be recorded against the title of the property in the County Recorder's office and a copy filed with the Community Development Director. The deed restriction shall run with the land and bind all future owners. The form of the deed restriction will be provided by the City and shall include the following:

- A. The ADU or JADU may not be sold separately from the primary dwelling.
- B. The ADU or JADU is restricted to the approved size and to other attributes allowed by this chapter, including the prohibition on short term rentals.
- C. The deed restriction runs with the land and may be enforced against future property owners.
- D. The deed restriction may be removed if the owner eliminates the ADU or JADU, as evidenced by, for example, removal of the kitchen facilities. To remove the deed restriction, an owner may make a written request of the Community Development Director, providing evidence that the ADU or JADU has in fact been eliminated. The Community Development Director may then determine whether the evidence supports the claim that the ADU or JADU has been eliminated. Appeal may be taken from the Community Development Director's determination consistent with other provisions of this Code.
- E. The deed restriction is enforceable by the Community Development Director or his or her

designee for the benefit of the City. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the City is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining the use of the ADU or JADU in violation of the recorded restrictions or abatement of the illegal unit.

17.21.100 Fees

F. Impact Fees.

1. No impact fee is required for an ADU that is less than 750 square feet in size.
2. Any impact fee that is required for an ADU that is 750 square feet or larger in size must be charged proportionately in relation to the square footage of the primary dwelling unit. (E.g., the floor area of the primary dwelling, divided by the floor area of the ADU, times the typical fee amount charged for a new dwelling.) "Impact fee" here does not include any connection fee or capacity charge for water or sewer service.

G. Utility Fees.

1. Converted ADUs and JADUs on a single-family lot are not required to have a new or separate utility connection directly between the ADU or JADU and the utility. Nor is a connection fee or capacity charge required unless the ADU or JADU is constructed with a new single-family home.
 - a. Should the owner determine to provide a separate utility connection, the connection is subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU or JADU, based on either the floor area or the number of drainage-fixture units (DFU) values, as defined by the Uniform Plumbing Code, upon the water or sewer system. The fee or charge may not exceed the reasonable cost of providing this service.
2. All other ADUs and JADUs require a new, separate utility connection directly between the ADU or JADU and the utility. The connection is subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU or JADU, based on either the floor area or the number of drainage-fixture units (DFU) values, as defined by the Uniform Plumbing Code, upon the water or sewer system. The fee or charge may not exceed the reasonable cost of providing this service.

The proposed text amendment would also amend Section 17.44.020(F) to read as follows:

- F. Junior accessory dwelling unit and accessory dwelling unit Refer to Section 17.21.040(I)

Environmental Determination:

Under California Public Resources Code section 21080.17, the California Environmental Quality Act (“CEQA”) does not apply to the adoption of an ordinance by a city or county implementing the provisions of section 65852.2 of the Government Code, which is California’s ADU law and which regulates JADUs, as defined by section 65852.22. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State’s ADU law.

In addition to being statutorily exempt from CEQA, the proposed ordinance is also categorically exempt from CEQA under the Class 3 exemption set forth in State CEQA Guidelines section 15303. The Class 3 exemption categorically exempts from CEQA, among other things, the construction and location of new, small structures and the conversion of existing small structures from one use to another. Section 15303 specifically lists the construction of appurtenant accessory structures and garages as examples of activity that expressly falls within this exemption. Here, the ordinance is categorically exempt under the Class 3 exemption because the ordinance regulates the conversion of existing structures into, and the new construction of, ADUs and JADUs, which are, by definition, structures that are accessory to a primary dwelling on the lot.

General Plan Consistency:

The City’s General Plan Housing Element, adopted on September 10, 2013, covers the 2013-2021 planning period. While a standalone document, the Housing Element is considered integral with PLAN Hermosa. The proposed text amendment has been evaluated for consistency with the City’s General Plan. Relevant Goals and Policies are listed below:

- **Policy 2.1** The City will continue to promote the development of a variety of housing types and styles to meet the existing and projected housing needs of all segments of the community
- **Policy 2.2** The City will continue to encourage the development of safe, sound, and decent housing to meet the needs of varying income groups
- **Policy 4.4** The City will continue to evaluate its Zoning Ordinance and General Plan and remove governmental constraints related to development standards. These may include, but not be limited to, parking requirements, allowing affordable housing on commercial sites, new standards for mixed-use development, lot consolidation incentives, and senior housing requirements.

The proposed text Amendment will promote the development of ADUs and JADUs, which provide an additional housing type in the City and are designed to meet the needs of a variety of residents and income groups. Furthermore, the Text Amendment will remove the Administrative Permit requirement for new ADUs and JADUs, thus removing a governmental constraint. The state law declares that these units are consistent with the densities set out in the general plan and are merely accessory to the already permitted residential uses on the site. This amendment promotes the state housing goals, responds to the state housing crisis and will assist the City in meeting its allotment for the upcoming RHNA cycle. Thus, there is nothing in this ordinance that will impede the city’s ability to meet its general plan (and housing element) goals.

Summary:

Based on recent changes to State law, the City’s Accessory Dwelling Unit Ordinance (codified as Chapter 17.21) will be deemed null and void as of January 1, 2020. This will limit the City to the

application of the few default standards provided in Government Code for the approval of ADUs and JADUs. The Text Amendment is intended to re-establish local control, as allowed by the “New ADU Law,” for the approval of ADUs and JADUs. Staff recommends the Planning Commission adopt the attached resolution recommending the City Council approving Text Amendment 19-2 and determine that the project is statutorily exempt from the California Environmental Quality Act (CEQA).

Attachments:

1. Draft Resolution

Respectfully Submitted by: David Blumenthal, AICP, Senior Planner

Approved: Ken Robertson, Community Development Director