

ACCESSORY DWELLING UNIT ORDINANCE



BACKGROUND & FREQUENTLY ASKED QUESTIONS – Updated Jan 2017

SUMMARY

On September 27, 2016, Governor Brown signed two accessory dwelling unit (ADU) bills into State law, Assembly Bill 2299 and Senate Bill 1069, amending the State’s existing second unit law (Government Code Section 65852.2). Effective January 1, 2017, the new State standards stipulate that local ordinances that do not align with State law will be “null and void,” unless a local agency adopts an ordinance in accordance with the specified State provisions in Section 65852.2.

In response to State law, the Department of City Planning (Department) issued a Zoning Administrator Interpretation (ZAI) on November 2, 2016. It provided the City with stop-gap regulations through the end of 2016, while the Department developed an ordinance in compliance with the new State provisions. That ordinance was considered before the City Planning Commission on December 15, 2016 and subsequently transmitted to City Council prior to the end of the calendar year. It is awaiting Council consideration.

STATE BACKGROUND

ADUs have been identified by the State as an important housing option for renters and homeowners, given the undersupply of housing. To construct, ADUs typically cost less than other types of housing, largely because they do not necessitate paying for land or purchasing major new infrastructure. As a form of infill-development, ADUs provides housing for family members, students, elderly, in-home health care providers, the disabled and others at below market prices within existing neighborhoods. Pursuant to State law, the units cannot be intended for sale separate from the primary residence.

Generally speaking, ADUs can take one of three forms:

- Detached: Unit is separated from the primary structure
- Attached: Unit is attached to the primary structure
- Repurposed Existing: Space within a primary residence that is converted into an independent living unit

Local governments may apply development standards and make findings to designate where the new construction of ADUs are permitted. Designating where ADUs are allowed should be based primarily on health and safety issues. Unreasonably restricting the ability of homeowners to create ADUs is contrary to the intent of State law and may subject local agencies to legal scrutiny. The California Department of Housing & Community Development has provided guidance stating that limiting the overall square footage of ADUs to unreasonably restrict its creation is inconsistent with the intent of Section 65852.2.

Under State law, the review and approval of an application for an ADU within an existing residence or accessory structure must be ministerial in nature. Detached or attached ADUs are also subject to the ministerial building permit requirements, provided there is independent exterior access to the ADU and rear setbacks sufficient for fire safety.

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LOCAL CONTEXT

Included below is a high-level overview detailing the history of ADUs in the State and City of Los Angeles:

- In 1982, the State established regulations for ADUs to encourage their creation while also maintaining local control and flexibility.
- In 1985, the City adopted Los Angeles Municipal Code (LAMC) 12.23 W.43 and W.44 which permitted second units through a conditional use permit process, subject to local standards.
- In 2002, the State enacted AB 1866 which updated the second-unit law to require that local governments must allow second units on both single family lots and multi-family lots through a by-right process.
- Due to the 2002 changes in State law, the City prepared two memos – one in 2003 and a second one in 2010 – to align the City’s practices with the State’s by-right process.
- The City was challenged on the legality of the second of the two memos and in September 2016, the City Council directed the Department to prepare a Zoning Administrator Interpretation (ZAI) that provides a by-right pathway for ADUs that adhered to certain standards established in the LAMC 12.23 W. 43 and W44 ordinance from 1985. The ZAI was issued on November 2, 2016.
- In December 2016, the Department transmitted to City Council an ordinance, one which complies with the new State provisions in section 65852.2.
- Effective January 1, 2017, the ZAI and LACM 12.23.W.43 and W.44 were declared null and void. The City of Los Angeles defaults to the new State provisions until a citywide ordinance is in place.

KEY PROVISIONS OF PROPOSED ORDINANCE

The Department’s proposed ordinance includes the following recommendations:

- No ADUs in Hillside areas, except when located within a half mile of public transit and adjoining a standard street;
- No ADUs between the front of the primary residence and the street;
- ADUs are only allowed in zones that allow residential uses with an existing single-family residence;
- ADUs are limited to only one per lot;
- ADUs are limited in size to 50% of the primary residence. Under no circumstance can an ADU be larger than 1,200 sq. ft. As for detached ADUs, the City may not require an ADU less than 640 sq. ft.;
- ADUs are required to meet all underlying zoning, floor area and land use regulations.

Note: ADUs must comply with all provisions of the underlying zoning district, except where they conflict with the ordinance. As such, standard regulations such as total residential floor area ratio (which limits total square footage in relation to lot size), height, building separation, etc. must all be met. The Department’s proposed revisions to the Baseline Mansionization (BMO) and Baseline Hillside Ordinances (BHO), which is currently awaiting final consideration by the City Council, will further regulate the overall floor area and scale of development on single-family lots.

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FREQUENTLY ASKED QUESTIONS

What are the State standards that the City must include in its own ordinance?

- The State's standards include a limitation on the size of an ADU. Both attached and detached ADUs cannot exceed 1,200 square feet. ADUs that are attached to an existing single family dwelling cannot be larger than 50% of the existing living areas.
- It stipulates that no passageway should be required in conjunction with the construction of an ADU.
- It also stipulates that no setbacks should be required for an existing garage that is converted to an ADU. ADUs that are constructed above a garage will need to provide a setback that is no more than five feet from the side and rear lot lines.
- Per State law, accessory structures with side and rear setbacks sufficient for fire safety may be eligible to convert to an ADU, provided they have their own exterior entrance.

What are the State's parking requirements for an ADU?

State legislation limits the required parking for an ADU to one parking space per unit or per bedroom and permits the parking space to be a tandem space in an existing driveway. When a garage, carport or covered parking structure is demolished in conjunction with the construction of an ADU, the replacement spaces may be located in any configuration on the same lot as the ADU including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces or by the use of mechanical automobile parking lifts. State legislation further stipulates that parking cannot be required when an ADU is located within ½ mile of public transportation or within an historic district. Parking is also not required for ADUs located within a primary residence or when a car-share vehicle is located within one block.

What additional limitations is the City considering?

The Department's recommended ordinance proposes to exclude ADUs in Hillside areas, except for residences that are located within half a mile from public transit or adjoining a standard street. The ordinance also limits the square footage of a detached ADU to no more than 50% of the square footage of the existing single family home, while allowing an ADU of at least 640 square feet but no more than 1,200 square feet. In addition, detached ADUs shall not be located between the primary dwelling unit and the street. The Baseline Mansionization Ordinance (BMO) and Baseline Hillside Ordinance (BHO), currently awaiting final adoption by Council, will further regulate the size of ADUs.

How does the ADU Ordinance work with the City's Rent Stabilization Ordinance (RSO)?

The City's Rent Stabilization Ordinance (RSO) provisions apply to properties with two or more single-family dwelling units on the same lot. ADUs qualify as single-family dwelling units. Therefore, creation of an ADU may be subject the property to the RSO. However, the RSO includes exemptions for dwelling units created after October 1, 1978 and to owner-occupied dwelling units. These exemptions will normally exclude a newly created ADU from the provisions of the RSO. Primary residences constructed on or before October 1, 1978 would be subject to the RSO if it is renter-occupied.

What additional standards can the City impose on ADUs?

The State affords the City the means to ensure that ADUs otherwise adhere to the local jurisdiction's standards with regards to height, setback, lot coverage, floor area and open space of the zone on which the property is located.

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How many ADU's have been built in the City?

Since 2003, a total of 644 projects have pulled a permit to build an ADU; however, only 404 of those have received a certificate of occupancy. The 644 permitted ADU's represent 1/8th of 1% of the City's 485,000 single family zoned parcels. Those numbers reflect the overall total as of March 14, 2016.

Why does it appear that there are more than 404 ADUs in the City?

It is estimated that there are thousands of structures that have been converted illegally by converting a garage or recreation room into a dwelling unit without proper permits. Those units are not made legal by the new ordinance and are subject to citation. Some of these existing units may be eligible to pursue permits if they otherwise meet the requirements of the new ordinance and the City's building codes.

Of the units that have been permitted and/or completed, where are they located?

Most of the approved units have been located in the San Fernando Valley because the lots are typically larger and the driveways and lots are configured such that an ADU can be accommodated. Some units have also been legally built in South LA, Hollywood and West LA.

How many ADUs have been built in the Hillside areas?

Due to the floor area, height, setback and other limitations that pertain to lots in the Hillside areas only a small handful of ADUs have been built in these areas. To date, 13 ADUs have been completed and another 16 have been permitted but not completed for a total of 29 ADUs in the Hillside areas.

