

# Agenda Report

December 11, 2017

**TO:** Honorable Mayor and City Council  
**FROM:** Planning & Community Development Department  
**SUBJECT: ZONING CODE TEXT AMENDMENTS TO SECTION 17.50.275 TO  
REVISE THE CITY'S ACCESSORY DWELLING UNIT REGULATIONS**

## **RECOMMENDATION:**

It is recommended that the City Council:

1. Acknowledge that the proposed Zoning Code text amendments are exempt from the California Environmental Quality Act (CEQA) under Public Resources Code Section 21080.17;
2. Adopt the Findings of Consistency (Attachment A);
3. Approve the proposed Zoning Code Text Amendments to Section 17.50.275 of Title 17 of the Pasadena Municipal Code as contained in this report; and
4. Direct the City Attorney to prepare an ordinance within 60 days amending the Pasadena Municipal Code as presented in this report.

## **PLANNING COMMISSION RECOMMENDATION:**

On May 24, 2017, the Planning Commission considered a series of proposed amendments to the City's existing Accessory Dwelling Unit regulations, and voted to recommend the approval of the staff recommendation, with two additional modifications as follows:

1. The minimum lot size requirement applicable to Accessory Dwelling Units created by adding new square footage be lowered to 5,000 square feet; and
2. Require that the size of detached Accessory Dwelling Unit be smaller than the existing primary dwelling.

In addition, the Planning Commission requested the ordinance language clearly state:  
1) standards applicable to Accessory Dwelling Units located within Landmark Overlay Districts are also applied to Accessory Dwelling Units located within National Register

Districts; 2) standards applicable to original windows and doors for Accessory Dwelling Units located within historic districts and individually designated properties are also applied to non-original windows and doors that previously replaced original windows and doors with an approval of a Certificate of Appropriateness; and 3) the difference between accessory structures and Accessory Dwelling Units.

### **EXECUTIVE SUMMARY:**

In January 2017, the City Council adopted a set of targeted amendments to the City's Accessory Dwelling Unit regulations in order to comply with the recently amended state law. Among the actions taken in January, the City Council directed the Planning & Community Development Department to conduct a comprehensive review of the existing Accessory Dwelling Unit regulations and return by end of June 2017 with potential revisions.

On June 19, 2017, the City Council considered and discussed a series of proposed amendments. Of particular concern was the proposed minimum qualifying lot size of 5,000 square feet, which the City Council generally felt was too small and too much a reduction from the existing 15,000 square foot minimum qualifying size. At the conclusion of the meeting the City Council continued the item and directed staff to conduct additional research on a number of specific topics in order to inform future discussion. The City Council also directed staff to conduct additional public outreach prior to returning to City Council. Consistent with this direction, staff performed additional research and held four community meetings and attended two additional meetings with the community. As with the June 19, 2017 report, this report also provides background on the State Law, including recent updates, and the existing local regulations, and identifies proposed revisions, including recommendations for minimum lot size requirements and maximum allowed unit size, potential impacts to historic districts, and tree protection provisions.

The notable changes to the staff recommendation since the June 19 meeting related to the City Council's discussion are:

- *Minimum lot size for a Newly Constructed Accessory Dwelling Unit:*
  - 7,200 square feet
    - Prior recommendation: 5,000 square feet
- *Minimum rear yard setback for a Newly Constructed Accessory Dwelling Unit:*
  - 10 feet
    - Prior recommendation: compliance with minimum rear yard setback for accessory structures
- *Minimum side yard setback for a Newly Constructed Accessory Dwelling Unit:*
  - Same as primary dwelling (10 percent of lot width, but not less than five feet. Maximum requirement, ten feet)
    - Prior recommendation: compliance with minimum side yard setback for accessory structures

- *Maximum size of Newly Constructed Accessory Dwelling Unit:*
  - 800 square feet or 50 percent of the size of the primary dwelling, whichever is less
    - Prior recommendation: 800 square feet, but not more than primary dwelling
- *Tree Preservation*
  - Require one-for one replacement of mature trees in a protected zone.
    - Existing Requirement: Comply with Tree Protection Ordinance

Staff continues to recommend that Newly Constructed Accessory Dwelling Units be prohibited in historic districts (e.g. Landmark Districts and National Register Historic Districts) unless the proposed Unit is not visible from the public right-of-way. Staff also continues to recommend that Newly Constructed Accessory Dwelling Units be prohibited on properties with an individually designated landmark.

## **BACKGROUND:**

### **State Law**

Over the past several years, there has been considerable discussion throughout California regarding a state-wide housing crisis, rising housing costs, and a shortage of affordable housing options. One approach to address these issues includes the creation of Accessory Dwelling Units as a way to increase housing supply. In recognition of these issues, State Law related to Accessory Dwelling Units was amended in September 2016 through both AB 2299 and SB 1069, making significant changes to the ability of local municipalities to regulate such units. Notable provisions of State Law include mandating that local municipalities allow an Accessory Dwelling Unit that is created by converting existing space on any single-family zoned property, changes in parking requirements for Accessory Dwelling Units, and invalidating local Accessory Dwelling Unit ordinances if they do not fully comply with the intent of the amended State Law.

While State Law still authorizes local municipalities to adopt additional restrictions, they may do so as long as the additional restrictions do not conflict with the regulations established in the State Law. The full text of State Law (Section 65852.2 of the Government Code) is included as Attachment B.

On September 29, 2017, the California Governor signed a package of legislation to address other housing issues in the state. He later signed two bills related to Accessory Dwelling Units – AB 494 and SB 229. Both bills are intended to clarify the previously-enacted bills noted above by continuing to eliminate some regulations and processes that cities and counties could have otherwise imposed on Accessory Dwelling Units. They also give the Department of Housing and Community Development (HCD) the authority to review local ADU ordinances. The City's existing Accessory Dwelling Unit Ordinance and proposed amendments already address many of the issues clarified by

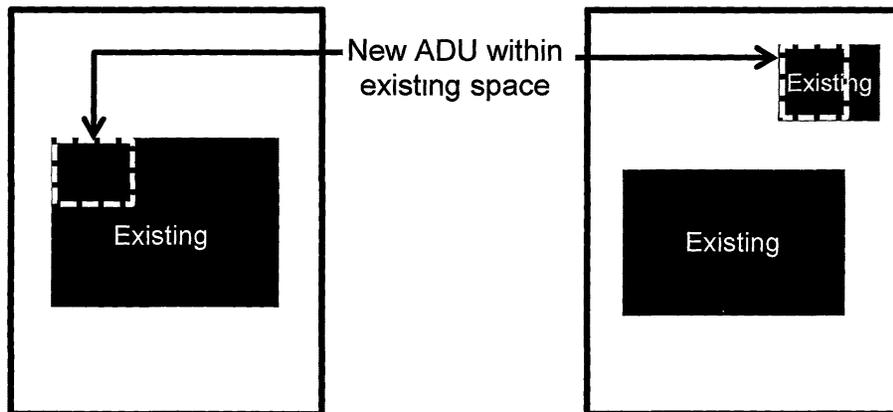
AB 494 and SB 229, including parking requirements and provisions for utility connections.

### **City's Existing Accessory Dwelling Unit Regulations (Section 17.50.275 of the Zoning Code)**

The City's original Accessory Dwelling Unit regulations (previously known as second dwelling unit regulations) were adopted in 2004; however, the City Council adopted targeted changes to the City's 2004 regulations in January 2017 in order to bring them into compliance with the State Law. Below is a summary of the key provisions of the City's current regulations that reflect the targeted changes adopted by the City Council in January 2017, and which are mandated by State Law:

#### Accessory Dwelling Units Created by Converting Existing Space ("Converted Accessory Dwelling Units")

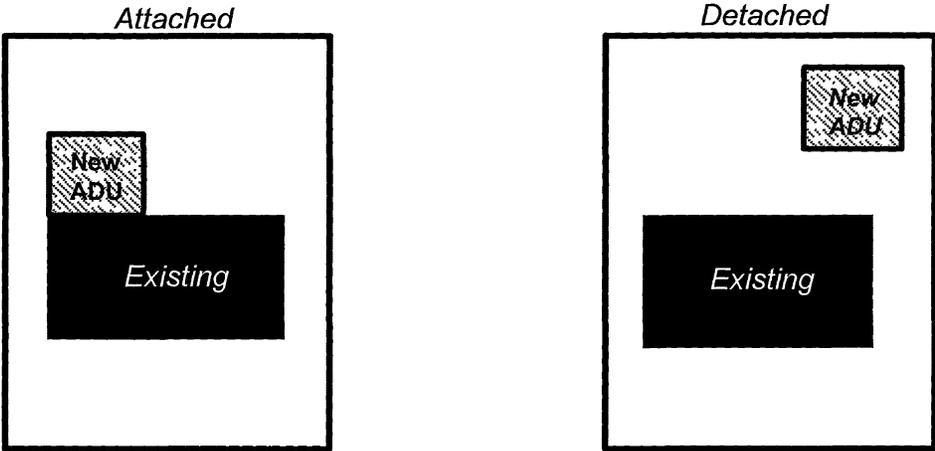
*Figure 1: Converted Accessory Dwelling Units*



- Type of Unit: Both attached and detached Accessory Dwelling Units are permitted.
- Operational Standards: Properties with an Accessory Dwelling Unit must be owner-occupied, Accessory Dwelling Units cannot be sold separately from the primary dwelling unit, and Accessory Dwelling Units created after January 1, 2017 have a minimum rental of more than 30 days. Property owners are required to record a covenant certifying compliance with these requirements.
- Location Standards: Permitted on any lot that is located within any single-family residential zoning district (RS).
- Parking Standards: No additional parking space is required.
- Development Standards: Must provide an exterior door, and side and rear yard setback must be sufficient for fire safety. No other standards apply per State Law.
- Building Code: All Converted ADUs must comply with relevant sections of the Building Code.

Accessory Dwelling Units Created by Adding New Square Footage (“Newly Constructed Accessory Dwelling Units”)

Figure 2: Newly Constructed Accessory Dwelling Units



- Type of Unit: Both attached and detached Accessory Dwelling Units are permitted.
- Operational Standards: Properties with an Accessory Dwelling Unit must be owner-occupied, Accessory Dwelling Units cannot be sold separately from the primary dwelling unit, and Accessory Dwelling Units created after January 1, 2017 have a minimum rental of more than 30 days. Property owners are required to record a covenant certifying compliance with these requirements.
- Location Standards: Permitted on any lot that is at least 15,000 square feet in size and is located within any RS zoning district that is not part of a Hillside or Landmark Overlay District.
- Parking Standards: One parking space in any form of covered, uncovered, or tandem on an existing driveway is required per unit unless the property meets established criteria for exemption (e.g. proximity to public transit stops and commercial car share vehicle drop-off/pick-up location).
- Development Standards: The unit size is generally limited to 800 square feet in size and limited to one story (maximum 12 feet to the top plate and 17 feet to the highest ridge line, and cannot exceed the height of the primary structure) unless such Accessory Dwelling Unit is attached to an existing two-story primary dwelling. In addition, a minimum building separation of six or 10 feet is required, depending on whether there is a door facing a wall of another structure or not, and no entry to an Accessory Dwelling Unit can be visible from the public right-of-way. Other than as specified above, this type of Accessory Dwelling Unit is required to comply with all other development standards that apply to the primary residence.

The City’s existing Accessory Dwelling Unit regulations, Section 17.50.275 of the Zoning Code, is included as Attachment C. It should be noted that many provisions of the City’s existing regulations (e.g. parking requirements, location where Converted

Accessory Dwelling Units are permitted, and certain setback requirements) cannot be changed as they are mandated by the State Law.

### **Summary of Council Discussion/Direction on June 19**

At the June 19 City Council meeting, the Council considered a number of proposed amendments to the Zoning Code regulations for Newly Constructed Accessory Dwelling Units. The Council was generally concerned that the proposed regulations were not restrictive enough, and that Newly Constructed Accessory Dwelling Units could potentially be constructed inappropriately (e.g., too large, too close to property lines, negatively impact character of historic districts).

Specifically, the Council voiced a concern that the staff recommendation of minimum qualifying lot size of 5,000 square feet was too small and too much of a change from the existing minimum size of 15,000 square feet. The Council was also concerned that Newly Constructed Accessory Dwelling Units constructed in historic districts, even if not visible from the street, could negatively impact the historic character of these areas. Unit size was a point of discussion with several Councilmembers who were concerned that allowing a unit as large as 800 square feet may be inappropriate in circumstances where the existing residence is not much larger in size, such that the new unit may not be subordinate enough. In addition, the concern that parking and traffic problems could result from Newly Constructed Accessory Dwelling Units, led some Councilmembers to voice concern that Newly Constructed Accessory Dwelling Units may be inappropriate on narrow streets.

The location of a Newly Constructed Accessory Dwelling Unit was of concern with several Councilmembers stating that the proposed rear and side yard setbacks allowed the new unit to be too close to rear and/or side property lines. Relatedly, the concern was expressed that new units could result in the loss of tree canopy due to the loss of trees that could be removed to make space for Newly Constructed Accessory Dwelling Units.

As mentioned, City Council requested City staff to provide additional information on any potential impacts of Accessory Dwelling Units on narrow streets located outside of Hillside Districts. Staff conducted that research and found that approximately 9.5 percent of the City's street segments are less than 30 feet ("narrow streets" are defined as streets providing less than 30 feet of right-of-way). And of these streets, 40 percent are already located in multifamily zoning districts containing a higher density of residential uses. Staff consulted with the Fire Department who did not express a concern with allowing Accessory Dwelling Units on narrow streets.

A number of public speakers expressed concern that City fees, specifically the Residential Impact Fee, are prohibitively high. However, several Councilmembers stated their reluctance to have fees reduced, and possibly increased fees should be considered.

Several members of the Council expressed concern that City staff did not provide enough opportunities for the community to give input, particularly those who live in the Northwest and those in historic districts. As a result, the Council directed staff to conduct additional outreach to the community, with an emphasis on the Northwest and historic districts.

### **Community Meetings**

Since the June 19, City Council meeting, city staff solicited public input at a total of four community meetings:

- September 21, 2017 (Landmark and National Register District Representatives), City Hall
- September 25, 2017 (Landmark and National Register District Representatives), City Hall
- October 17, 2017, Jackie Robinson Center
- October 19, 2017, Pasadena Senior Center

In addition, Planning staff presented at two other meetings:

- Bungalow Heaven Annual Meeting (October 11, 2017)
- Council District #5 Town Hall (October 26, 2017)

Prior to June 19, staff held two community meetings in April 2017 in order to inform the staff recommendation at the June 19 City Council meeting.

Because State Law significantly limits the local municipalities' ability to regulate Converted Accessory Dwelling Units (Accessory Dwelling Units created by converting existing space) the main focus of the community meetings was to gather public input on potential changes related to the specific issues raised by the City Council at the June 19 meeting regarding development standards that apply to Newly Constructed Accessory Dwelling Units (Accessory Dwelling Units created by adding new square footage).

A number of comments received showed general support for easing the restrictions on Newly Constructed Accessory Dwelling Units, in order to facilitate their construction while others were concerned about the potential negative impacts of such Units. Specifically, those in support of Newly Constructed Accessory Dwelling Units generally supported lowering the minimum lot size (10,000 square feet, 7,200 square feet, 5,000 square feet, and in some instances, preferring no minimum); permitting these Units in historic districts, both with and without a visibility restriction; and increasing the maximum unit size to 1,200 square feet or larger. Of note, the majority of commenters at the October 17 and 19 meetings expressed support for a 5,000 square foot, or no minimum, lot size. Other comments in support of these Units included reducing or waiving City fees, including the Residential Impact Fee, allowing them above detached garages, and requiring setbacks only as necessary to comply with Building and Fire restrictions.

Comments received that expressed concerns about Newly Constructed Accessory Dwelling Units, primarily from a single-family neighborhood and historic district preservation perspective, included maintaining or moderately lowering the minimum lot size, maintaining the restriction on these units in historic districts, or only allowing them with appropriate design, not reducing City fees, and increasing setbacks.

Other additional comments received included concerns related to enforcement of the required operational standards (e.g. owner-occupant requirement, short-term rental prohibition), the impact of Accessory Dwelling Units on housing supply and affordable housing, and tree preservation.

## **ANALYSIS:**

### **State Law**

As mentioned, AB 2299 and SB 1069 amended various sections of the California Government Code that regulate second dwelling units, making considerable changes to the ability of local municipalities to regulate such units. The most notable provisions of the amended State Law are as follows:

- Existing local Accessory Dwelling Unit ordinances are invalidated if not in full compliance with the requirements of the amended State Law; and
- Accessory Dwelling Units created by converting existing space, or “Converted Accessory Dwelling Units,” must be allowed in all zoning districts permitting single-family use. As such, cities have no ability to limit where Converted Accessory Dwelling Units can be constructed within zones allowing single-family uses, and cities cannot adopt standards that prevent Converted ADUs from being built.

In addition:

- For all Accessory Dwelling Units, no parking can be required if an Accessory Dwelling Unit is within half a mile of a public transit stop;
- If an Accessory Dwelling Unit does not qualify for parking exemption, only one parking space per unit or one space per bedroom, whichever is less, can be required for an Accessory Dwelling Unit (does not have to be a covered space);
- When existing parking spaces (i.e. garage or carport) for a primary dwelling unit are demolished in conjunction with the construction of or conversion to an Accessory Dwelling Unit, the replacement parking spaces for the primary dwelling unit do not have to be covered spaces and may be tandem spaces; and
- No setback can be required for an existing garage that is converted into an Accessory Dwelling Unit, and no more than five feet of side or rear yard setback can be required for an Accessory Dwelling Unit constructed above an existing garage.

## **PROPOSED AMENDMENTS:**

As previously mentioned, recently amended State Law significantly restricts the ability of local municipalities to regulate Accessory Dwelling Units. Based on a review of State Law, Cities do have an ability to regulate Accessory Dwelling Units that are created by adding new square footage, or Newly Constructed Accessory Dwelling Units. As such, the majority of the proposed changes pertain to Newly Constructed Accessory Dwelling Units.

The proposed amendments aim to facilitate the creation of Accessory Dwelling Units to provide additional housing opportunities as intended by the State Law by significantly expanding areas where Accessory Dwelling Units can be constructed while providing appropriate standards and limitations as allowed by the State Law to maintain the character of the single-family neighborhoods. In addition, the proposed amendments are consistent with the City Council direction from the January 30, 2017 meeting where the staff was directed to return with comprehensive amendments that would facilitate production of Accessory Dwelling Units, including changes in the minimum lot size requirement.

In considering potential changes, staff considered the public comments received at the community meetings, other local municipalities' accessory dwelling regulations, and property profiles of existing residential districts in the City. The recommendations are divided into two categories, those revised since the June 19 City Council meeting and those where staff has not changed the original recommendation at the June 19 meeting. A full summary of the proposed changes is included as Attachment D.

### **Revised Staff Recommendations**

#### **Location Requirement for Newly Constructed Accessory Dwelling Units**

- *Minimum Lot Size*  
*Existing: 15,000 square feet / Proposed: 7,200 square feet*

The issue of minimum lot size was a main topic of discussion at the June 19 City Council meeting. City Council indicated that the staff recommended minimum lot size requirement of 5,000 square feet was too small and directed Staff to conduct additional research and analysis.

The existing minimum lot size requirement of 15,000 square feet is very restrictive, as only 3,073 out of 20,331 (15 percent) RS-zoned properties in the City are 15,000 square feet in size or larger. When taken with other location prohibitions of Newly Constructed Accessory Dwelling Units, including restrictions in the Hillside and Landmark Districts, only 1,275 out of 20,331 (six percent) of the City's single family properties are eligible to construct a Newly Constructed Accessory Dwelling Unit. As such, the majority of the public comments received at the community meetings supported establishing a lower minimum lot size requirement, which ranged from no minimum to 12,000 square feet. In particular, at the October 17 and 19 community

meetings, the majority of commenters supported a 5,000 square foot minimum size threshold, or no minimum lot size.

In order to establish a new minimum lot size requirement that is appropriate for the City and consistent with the intent of State Law, staff analyzed minimum lot size requirements of other municipalities, along with property profiles of Pasadena. A 10,000 square-foot minimum was analyzed, but it was determined that it would not be consistent with the intent of the State Law as only 16 percent of the recommended RS-zoned properties (not including Hillside District properties) fall under this category.

Staff research of other local municipalities' Accessory Dwelling Unit regulations indicated that in many cities the minimum lot size requirements for Accessory Dwelling Units were consistent with the minimum lot size required of a typical single-family zoning district in respective municipalities. As such, staff originally recommended to the Planning Commission that 7,200 square feet be established as the new minimum lot size requirement for Newly Constructed Accessory Dwelling Units; this is the minimum lot size required for new properties in the RS-6 zoning district. Because approximately 49 percent of all recommended RS-zoned properties (also not including Hillside District properties) are 7,200 square feet or larger, it is the staff position that a 7,200 square-foot lot size minimum would meet the intent of State Law by providing sufficient opportunity for homeowners to construct Newly Constructed Accessory Dwelling Units.

- *Landmark Overlay District*

*Existing: not permitted / Proposed: prohibit in both Landmark and other historic districts, such as State and National Register Districts, unless not visible from public right-of-way*

Landmark Overlay Districts are areas that were determined to be historically significant at the local level. There are a total of 21 Landmark Overlay Districts in residential districts (not including pending districts) plus eight National Register Historic Districts, totaling approximately 3,485 properties, of which 2,706 properties are 7,200 square feet or larger.

In Landmark Overlay Districts, along with other State and National Register Districts, a discretionary permit ("Certificate of Appropriateness") is required for any exterior alterations, additions, and new construction that is visible from a public right-of-way to ensure that these proposed changes are compatible with the character of the individual property and/or historic district and that significant historic structures are preserved. In addition, there are a number of individually designated properties (e.g. historic landmarks, historic monuments, Greene & Greene, etc.), where a Certificate of Appropriateness is required for any type of alteration (includes interior renovations if the property is designated as a historic monument or Greene & Greene), addition, and new construction. Under the existing regulations, Newly Constructed Accessory Dwelling Units are not permitted on properties located within historic districts.

Based on a significant number of RS-zoned properties in the existing Landmark Overlay Districts and National Register Historic Districts (approximately 17 percent of all RS-zoned properties) and the existing development pattern of such districts (approximately six percent of the RS-zoned properties within Landmark Overlay and National Register Historic Districts already consist of two or more units), allowing Newly Constructed Accessory Dwelling Units within these districts may be appropriate if compatibility with the respective historic districts can be ensured with proper design review. However, the Certificate of Appropriateness, which is a discretionary permit, cannot be required for Accessory Dwelling Units per State Law which mandates that all Accessory Dwelling Units be processed ministerially. Including design standards used in the Certificate of Appropriateness review (i.e. Secretary of Interior's Standards) is not considered ministerial as design standards are usually subjective and require some level of discretion.

Therefore, in order to balance the intent of State Law against the preservation of Pasadena's historic neighborhoods, it is proposed that Newly Constructed Accessory Dwelling Units be prohibited in Landmark Overlay Districts and other historic districts (i.e. State and National Register Districts) unless such units are not visible from the public right-of-way and would therefore not be subject to a discretionary review process. This is consistent with the existing threshold for a Certificate of Appropriateness, since projects that are not visible from the public right-of-way are not subject to the City's design review. Further, it is recommended that Newly Constructed Accessory Dwelling Units would not be permitted on individually designated properties as all exterior improvements, whether visible or not visible from the public right-of-way, require a Certificate of Appropriateness review.

- *Base Zoning*  
*Existing: RS zones / Proposed: Newly Constructed ADUs permitted in RS and RM zones with one unit; Converted ADUs permitted in all zoning districts that permit single-family residential use*

The primary intent of the State Law is to allow one Accessory Dwelling Unit per single-family property. In order to ensure orderly development of Accessory Dwelling Units as mandated by the State Law while protecting the character of the single-family neighborhoods from any additional density beyond two units per property, it is proposed that Accessory Dwelling Units (Converted and Newly Constructed) be permitted on RS-zoned properties that are either vacant or consist of one single-family house. Any legally non-conforming RS-zoned properties that currently consist of two or more residential units will not be permitted to construct an additional Accessory Dwelling Unit, but the owner may apply to make the legally non-conforming unit into a legal Accessory Dwelling Unit if all the required standards for Accessory Dwelling Units can be met. An unpermitted Accessory Dwelling Unit may be made legal by complying with the applicable regulations.

In addition, because there are a number of multi-family zoned properties (RM-12, RM-16, RM-16-1, RM-32, and RM-48) that consist of only one single-family house,

Accessory Dwelling Units (Converted and Newly Constructed) are proposed to be permitted on such properties.

Finally, the recently-signed SB 229 requires Converted Accessory Dwelling Units be permitted on a property with a single-family house where a single-family residence is an allowed use. This differs from the recommendation for multi-family zoned properties noted above, in that this applies to commercially-zoned properties that allow single-family residences. For example, the CL (Commercial, Limited) and CO (Commercial, Office) zoning districts, while primarily focused on commercial uses, both allow single-family residences as a permitted use, subject to the development standards applicable to RS-6 Zoning District.

#### Setbacks for Detached Newly Constructed Accessory Dwelling Units

*Existing: same as primary residence / Proposed: rear yard ten feet, side yard same as primary residence*

Newly Constructed Accessory Dwelling Units are required to comply with most of the development standards that apply to the primary residence, which includes rear yard setback requirement of 25 feet. While this requirement is reasonable for Newly Constructed Accessory Dwelling Units that are attached to the primary residence, it may hinder the ability to construct a Newly Constructed Accessory Dwelling Unit that is detached from the primary residence. Staff's original recommendation was to utilize the existing setback requirement for detached accessory structures which could potentially allow setbacks of two feet from rear and side property lines under certain circumstances (at least 100 feet from the front property line or entirely within the rear 25 feet of the property, and in compliance with an established encroachment plane standard). Concerns were raised at the June 19, 2017 City Council meeting that two feet is too close to the property line for a habitable structure and may have negative impacts on neighboring properties. Staff therefore recommends rear and side setbacks as follows.

Currently, properties zoned for two single-family residences, or duplexes, (RM-12) allow a detached rear unit to be as close as ten feet from a rear property line. For both RM-12 and all RS-zoned properties, the minimum side setback for any residence is ten percent of the lot width, but no less than five feet, and with a maximum requirement of ten feet. Staff recommends applying these same minimum setbacks to a detached Newly Constructed Accessory Dwelling Unit as a property with two single-family residences is the most similar to a property with one single-family residence and an Accessory Dwelling Unit. This would be a consistent application of these minimum setback requirements.

#### Tree Preservation

*Existing: Comply with Tree Protection Ordinance / Proposed: Require one-for-one replacement of mature trees in protected zone.*

The City's existing Tree Preservation Ordinance applies to the following per Chapter 8.52 on the Municipal Code:

- Native and specimen trees in the established front yard, required side yard, established corner yard, or required rear yard of all property located in a single-family residential or RM-12 multifamily residential zone, and in all areas of all other zoning districts within the City.
- Landmark trees and trees that meet the criteria for designation as a landmark as determine by the review authority.
- Public trees located at all places within the City.
- Mature trees (diameter of 19 inches or greater) in all zoning districts except for trees on properties subject to the RS or RM-12 development standards.

At the June 19 meeting, the City Council was concerned that the construction of Accessory Dwelling Units would lead to the removal of older trees in rear yards, and that additional tree protection measures would be needed. Currently, removal of a tree for any reason requires a private tree removal permit for previously identified native and specimen trees that exceed a specified size (varies by species) that are also located in the required rear yard of a RS or RM-12 zoned property. Although large trees, defined as 'mature trees' in the Tree Protection Ordinance, are protected, removal of such trees are specifically exempted from protection on properties subject to the RS or RM-12 development standards.

Since Accessory Dwelling Units are permitted in single family-zoned properties, the tree removal permit exemption for mature trees in protection zones would apply. The City would not be able to require a tree removal permit for a proposed ADU since this requirement would be considered discretionary. State law allows the City to impose "landscape standards" on Accessory Dwelling Units but requires that they be ministerial. Therefore, staff recommends requiring a one-for-one replacement of mature trees in a protected zone if they are being removed in order to construct an Accessory Dwelling Unit.

### Maximum Unit Size

The City's existing regulations limit the size of a Newly Constructed Accessory Unit to the lesser of 800 square feet or 50 percent of the size of the primary dwelling, while State Law permits local municipalities to allow as high as 1,200 square feet. A number of public comments received at the community meetings urged the City to utilize the size allowed by the State Law and increase the maximum unit size to 1,200 square feet.

Establishing appropriate size and scale limitations for Accessory Dwelling Units is important as the size and scale of any structure on a lot play a crucial role in the character of the neighborhood and may impact the privacy of adjacent properties. As the term suggests, Accessory Dwelling Units are intended to be accessory to the primary residence and should be clearly subordinate to the main home (i.e. size of the unit is approximately 50 percent of the existing primary dwelling or less).

For this reason, many local municipalities adopted a maximum unit size that is lower than 1,200 square feet, ranging from 500 to 800 square feet. Some cities have adopted a maximum unit size that is proportional to the lot size or the size of the existing primary

residence to respect varying neighborhoods. Further, in many instances a 1,200 square-foot Accessory Dwelling Unit would not be subordinate to the primary structure in Pasadena; the majority of residences (more than 75 percent) on the RS-zoned properties in the City consist of an existing primary dwelling unit that is smaller than 2,400 square feet. In addition, the median house size for the properties located within the typical single-family residential zone (RS-6 zoning district) that are at least 7,200 square feet is approximately 1,700 square feet.

Consistent with City staff's original recommendation, the Planning Commission voted to maintain the existing maximum unit size of 800 square feet for Newly Constructed Accessory Dwelling Units, however, the Planning Commission additionally recommended that in no case the size of the Newly Constructed Accessory Dwelling Unit be allowed to be larger than the existing primary dwelling. At the June 19 City Council meeting, the Council was concerned that in some cases a unit of 800 square feet in size may not be appropriately subordinate where the existing primary dwelling is relatively small in size (e.g. ~800 square feet). In response to this concern, as well as input received from community meetings, staff recommends the existing size regulation, 800 square feet or 50 percent of the existing primary dwelling, whichever is less, not be changed. This will generally ensure that Newly Constructed Accessory Dwelling Units are subordinate and accessory to the primary dwelling.

### **Previous Staff Recommendations Not Revised**

#### Prohibition in Hillside Overlay District

*Existing: Prohibited / Proposed: No change*

Areas within the Hillside Overlay District are often characterized by significant topographical variations, streets of substandard width, and a large amount of natural vegetation. Impacts of new construction often pose concerns in hillside neighborhoods, particularly related to impacts on potential traffic congestion, availability of parking, grading associated with new construction, and damage to roadways. Also, construction in hillside areas can have impacts on public safety due to construction vehicles and machinery traversing narrow hillside streets. Hillside areas also have a higher fire and natural disaster risk, since many streets within Hillside Overlay Districts are considered "substandard" due to their narrow width, which poses challenges in providing timely emergency access.

In recognition of this, the City requires a discretionary permit approval ("Hillside Development Permit") for any new houses and additions of certain size. The purpose of this review process is to ensure that the proposed developments in the Hillside Overlay District are compliant with the intent of the district, which is to preserve significant natural topographic features and minimize developmental impacts to topography, maintain and protect natural resources such as flora and fauna, wildlife habitats, and mature trees, prohibit features that would create or increase safety hazards such as fire, floods, and landslides, and avoid residential densities that would require extensive grading or generate extensive traffic. Such review cannot be required of Accessory Dwelling Units, as all reviews must be ministerial.

Therefore, the existing regulation prohibiting Newly Constructed Accessory Dwelling Units within the Hillside Overlay District is proposed to remain in place based on potential public safety concerns associated with unique site conditions present on the majority of areas within the Hillside Overlay District as allowed by the State Law, which include narrow and winding streets, unavailability of on-street parking, overdevelopment and grading, and steep slopes.

#### Location of an Entry Door

*Existing: not visible / Proposed: not on same façade as primary residence*

Currently, the entry door of an Accessory Dwelling Unit is not permitted to be visible from the public right-of-way. Similar provisions exist in other local municipalities in an effort to maintain the single-family neighborhood character, as two separate entry doors being visible from a street is a traditional characteristic of a duplex. However, concerns raised at community meetings expressed that it is an unnecessary requirement that may hinder the ability to construct an accessory dwelling unit depending on the site conditions.

Because Newly Constructed Accessory Dwelling Units are typically set back significantly from the front property line as they are located in the rear of a property, the visual impact of an entry door of such units is relatively low even if it is facing the street. However, attached Accessory Dwelling Units may be located closer to the street, so the visual impact of an entry door of these units could potentially be more significant in altering the single family character of the neighborhood. Therefore, it is proposed that this provision be modified so the entry door to an attached Newly Constructed Accessory Dwelling Unit is not on the same façade as the entry door to the primary dwelling. In addition, the same standard will apply to attached Converted Accessory Dwelling Units, to the extent that this requirement would not prohibit creation of such units.

#### Building Separation

*Existing: six feet and ten feet / Proposed: six feet*

Currently, the minimum required distance between a Newly Constructed Accessory Dwelling Unit and the primary residence is six feet, measured eave to eave, except that ten feet, also eave to eave, is required when the entry door of the unit faces the wall of another structure on the property. Staff proposes to simplify this requirement by maintaining the six foot minimum separation in all cases, regardless of the location of the entry door. This standard is consistent with the distance separation requirements for all other accessory structures (e.g. detached garages, gazebos, etc.).

### Second Story Accessory Dwelling Units and Increase in Height Limit

*Existing: Second stories not allowed on detached structures; height limit 17 feet /  
Proposed: No change*

Second story Newly Constructed Accessory Dwelling Units are currently not permitted in the City, unless the Newly Constructed Accessory Dwelling Unit is attached to an existing two-story primary dwelling. The height limit for a detached Newly Constructed Accessory Dwelling Unit is 17 feet at the highest point and 12 at the top plate (where the roof meets the exterior walls). For comparison, detached accessory structures (e.g. pool house, work shed, etc.) are also limited to one-story in height, with a maximum height of 15 feet at the highest point and nine at the top plate.

A number of comments received at the community meetings requested the City allow Newly Constructed Accessory Dwelling Units to be constructed above detached non-habitable accessory structures as well as single-story residences. Some of the comments also requested increase in height limit to accommodate second story Accessory Dwelling Units. Other comments suggested that two story detached accessory structures were appropriate if the primary structure was already two stories in height.

Allowing two-story Newly Constructed Accessory Dwelling Units has the potential to create a number of negative impacts, including view obstruction and privacy issues. State Law prohibits local cities from requiring a side and rear setback of more than five feet for Accessory Dwelling Units constructed over a garage; therefore, if a Newly Constructed Accessory Dwelling Unit is permitted to be constructed over a detached structure, the City could not impose the same setback and encroachment plane requirements that apply to the primary residence, resulting in negative impacts related to view obstruction and privacy of adjacent properties since detached structures are typically located close to the side and rear property lines.

As noted above, the City's existing Zoning Code already recognizes this issue by limiting the height of all detached accessory structures to one story. Also, allowing an attached Newly Constructed Accessory Dwelling Unit on a property with a single-story primary dwelling may not conform to the idea of it being "subordinate" to the main house. Lastly, as noted above, the current height limit applicable to detached Newly Constructed Accessory Dwelling Units is already higher than what is allowed for detached accessory structures. Therefore, in order to preserve traditional single-family neighborhood characteristics, staff does not recommend permitting second-story Accessory Dwelling Units above non-habitable detached accessory structures, nor above an existing one-story house.

### Minimum Unit Size for Detached Accessory Dwelling Units

*Existing: none / Proposed: 150 square feet*

The City's existing regulations currently do not specify a minimum size for Accessory Dwelling Units. In order to ensure development of properly sized Accessory Dwelling Units, it is proposed that a minimum unit size of an Accessory Dwelling Unit be

established in compliance with the State Law, which is 150 square feet (an efficiency unit, as defined in Section 17958.1 of Health and Safety Code).

**Windows and Doors for Converted Accessory Dwelling Units located within Historic Districts**

*Existing: none / Proposed: original windows and doors must be retained to reasonable extent*

The State Law requires local municipalities to permit Converted Accessory Dwelling Units in all single-family zoned properties, regardless of whether the property is located within a historic or a hillside district. Also, local municipalities cannot require any standards that may prevent the ability to create such a unit. Even though Converted Accessory Dwelling Units in general would typically involve minimal exterior changes as they are created by converting an existing space, there would be cases where historic windows and/or doors may need to be modified.

In order to reduce potential negative impacts that new Converted Accessory Dwelling Units may have on historic districts, it is proposed that the original windows and doors (including openings and garage doors) on contributing properties to Landmark and other historic districts that are visible from the public right-of-way, including non-original windows and doors that previously replaced original windows and doors with an approval of a Certificate of Appropriateness, be retained unless this requirement prevents the creation of such units (e.g. non-compliance the required Building and/or Fire Code). For individually designated properties, this requirement will apply to all original windows and doors regardless of their location. This is consistent with the existing threshold for a Certificate of Appropriateness, as previously explained. It should be noted that such standard is not necessary for Newly Constructed Accessory Dwelling Units since such units are permitted in historic districts only if they are not visible from the public right-of-way, and are not permitted on individually designated properties.

**REQUIRED FINDINGS:**

In order to amend the Zoning Code, a proposed amendment must be: 1) in conformance with the goals, policies, and objectives of the General Plan, and 2) not detrimental to the public interest, health, safety, convenience, or general welfare of the City. It is the staff recommendation that the necessary findings can be made, and are included in Attachment A.

**COUNCIL POLICY CONSIDERATION:**

The proposed amendment to the Zoning Code furthers the goals and policies of the General Plan related to housing choices, compatibility, scale and character of new construction in a designated landmark and historic districts, adequate and affordable housing, neighborhood character, housing character and design, appropriate scale and massing, garages and accessory structures, neighborhood character, housing diversity, and the Implementation Program 13.2 of the Housing Element, as described in Attachment A (Findings of Consistency).

**ENVIRONMENTAL ANALYSIS:**

Under California Public Resources Code (CPRC) Section 21080.17, California Environmental Quality Act (CEQA) does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.2 of the Government Code, which is the State Accessory Dwelling Unit law. Therefore, the proposed Zoning Code text amendments to the City's Accessory Dwelling Unit regulations are statutorily exempt from CEQA in that the proposed amendments consists of provisions that further implements the state Accessory Dwelling Unit law.

**FISCAL IMPACT:**

There is not a direct fiscal impact associated with the adoption of the proposed Zoning Code Amendment, fees will be received for the review and issuance of building permit applications.

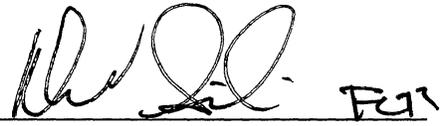
Respectfully submitted,



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Approved by:



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STEVE MERMELL  
City Manager

Attachments (5)

- A Findings of Consistency
- B Full Text of Government Code Section 65852 2
- C Section 17 50 275 of the Zoning Code (Existing)
- D Summary of Proposed Changes
- E Map – Where Newly Constructed Accessory Dwelling Units are Currently and Proposed to be Permitted