



Historic Preservation Review Commission Staff Report

December 19, 2019

Project: Amendments to Title 17 (Zoning) of the Benicia Municipal Code pertaining to regulations for accessory dwelling units (ADUs), after a determination that the project is exempt from CEQA.

Staff Recommendation

Move to adopt the resolution (Attachment 1) recommending that the City Council of the City of Benicia adopt an ordinance amending Consider the proposed zoning text amendments, conduct the public hearing, and adopt the resolution recommending that the City Council adopt an ordinance amending Chapter 17.16 (Use Classifications), Chapter 17.70 (General Regulations) and Chapter 17.108 (Design Review) of the Benicia Municipal Code (BMC), after a public hearing and determination that the project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA).

Project Description

The proposed project is an amendment to the Benicia Municipal Code (BMC) regulations for Accessory Dwelling Units (Section 17.70.060) and additional associated amendments to Definitions (Chapter 17.16) and Design Review (Chapter 17.108). The amendments would bring the City of Benicia into compliance with recent changes to State statute. The amendments would additionally clarify procedures, modify height standards and setback standards, and revise objective design standards for ADUs.

Public Noticing

In accordance with Government Code Section 65091, notice of public hearing was posted in Benicia City Hall on December 4, 2019 and published in the Benicia Herald on December 8, 2019.

Project Location

The proposed amendments to the Zoning Ordinance would be effective city-wide.

Background

Prior Amendment to ADU Ordinance (2019)

In 2016, revisions to State law required local agencies to streamline permitting to allow second units on all residentially-zoned lots with only ministerial review. Ministerial review means that if a proposed ADU meets the City's objective standards, it must be approved. The City is not allowed to require design review or any other type of

discretionary approval for an ADU that complies with objective standards.

In 2017, State law further limited the scope of allowable local agency zoning controls for second units. In response to these changes, the City of Benicia adopted an updated Accessory Dwelling Unit (ADU) ordinance in January 2019 which included the following key revisions:

- Ministerial review process for all ADUs including those within historic districts
- Streamlined permitting process for conversion of existing structures into ADUs
- Elimination of on-site parking requirements for ADUs.
- Increased height and floor area allowances for attached and detached ADUs and simplified setback standards.
- Adoption of objective design standards for ADUs citywide, with specific standards for ADUs in historic districts.

The adopted regulations, found in Zoning Ordinance Sections 17.70.050 (Accessory Uses and Structures) and 17.70.060 (Accessory Dwelling Units) of the Benicia Municipal Code (BMC), are consistent with the State regulations. However, upon adoption of these regulations in January 2019, the City Council directed staff to consider future revisions to address concerns including:

- The quality of living space above ground floor garage (e.g., dormer requirements, allowed height)
- Allowed lot coverage
- Setbacks
- Other comments from architects on the adopted regulations

The City's updated regulations have coincided with an increase in the number of ADUs seeking permit approval. In 2018, the City issued permits for three ADUs. To date, in 2019 the City has issued permits for eight ADUs; two additional ADU building permits are in review or ready to issue.

New legislation was passed in 2019 that further streamlines and clarifies the State's requirements for ADUs. A summary of revisions to the statute is provided as Attachment 2 and a markup of the State's updated regulations, which take effect on January 1, 2020, is provided as Attachment 3.

Stakeholder Outreach

In preparation for the ADU zoning amendments, staff conducted an outreach meeting with local architects engaged in permitting for ADUs to obtain feedback on the topic areas identified by the City Council and to obtain additional comments on additional design and processing input on August 2, 2019. Staff also consulted with representatives of the Benicia Historical Society to provide information and obtain feedback (August 2 and October 4). A summary of comments from both groups is provided as Attachment 4; comments from architect Brandon Marshall is provided as Attachment 5.

The feedback of stakeholder meeting participants was considered and compiled into preliminary recommendations, which were discussed in a joint meeting on November 14, 2019. A summary of comments is provided in Attachment 6; analysis of how comments were considered is detailed in the body of this report.

Participants recommended that the City establish a grandfathering/amnesty process for ADUs that were constructed or converted without building permits.

Analysis

The State's new requirements for ADUs further streamline ADU approval, expand opportunities for new ADUs, and limit the applicability of local design criteria for certain ADUs. In the Historic District, this means that some standards (such as height limitations and location requirements) must be modified to align with new State standards. The limitations on local review, both in terms of timing and ministerial permitting, require that the City must act on an ADU application within 60 days, and that an ADU which conforms to the standards of the Zoning Ordinance shall be approved. The City cannot require any commission-level review for an ADU that meets the criteria of the Zoning Ordinance. However, the draft ordinance would establish procedures why which ADUs that exceed these standards can be reviewed through a discretionary process such as design review or zoning variance.

In addition to aligning the ordinance with the State requirements, staff incorporated feedback from local design professionals and historic preservation advocates to adjust the regulations for clarity, livability and compatibility within the Historic District. Key amendments to the ordinance in response to recent legislation and community feedback are described below, along with analysis of additional amendments that were suggested by stakeholders through the outreach process.

The proposed ordinance amending the ADU regulations is provided as Exhibit A of Attachment 1. A mark-up of the current regulations is provided as Attachment 6.

Proposed Amendments in Compliance with Recent Legislation

The 2019 housing legislative package signed by the Governor in October 2019 included five bills updating the State ADU legislation, which take effect on January 1, 2020. Although the new legislation retains the ability for local standards to establish standards that prevent adverse impacts to property on the California Register of Historic Resources, it precludes consideration of lot coverage and establishes mandatory standards for setback and height requirements.

Key areas of amendment for Benicia include the following:

1. Where Allowed.
 - o ADUs must be allowed in all zoning districts that permit multifamily dwellings. In Benicia, this includes commercial and mixed-use districts. Gov't Code 65852.2(a)(1)(D)(ii).

- See draft ordinance Section 17.70.060.B
2. Approval Process.
 - The City must act on an ADU application within 60 days of receiving the application. Gov't Code 65852.2(a)(3).
 - See draft ordinance Section 17.70.060.C
 3. Junior ADUs.
 - The City must allow Junior ADUs (less than 500 sq. ft.) consistent with state law. Junior ADU provisions are no longer optional. Gov't Code 65852.2(a)(3).
 - See draft ordinance Section 17.70.060.D
 4. ADUs Subject to Limited Standards.
 - For certain types of ADUs, the City must ministerially approve the project subject to limited standards. The City may not require compliance with other standards that otherwise would apply. Gov't Code Section 65852.2(e)
 - See draft ordinance Section 17.70.060.G
 5. Number of ADUs per Lot.
 - On single-family lots, the City must allow one ADU and one junior ADU p if exterior access is available; and side and rear setbacks are sufficient for fire and safety. On multi-family lots, the City must allow at least one ADU and up to 25% of existing multi-family dwelling units within a building, and up to 2 detached ADUs subject to compliance with 16 foot height and 4 foot setback requirements (Gov't Code 6585.52.2(e)).
 - See draft ordinance Section 17.70.060.G
 6. Floor Area.
 - The City must allow an attached ADU with a floor area of 50 percent of the primary dwelling and at least 850 square feet for an ADU with one bedroom or less and 1,000 square feet for an ADU with more than one bedroom. The City must allow a detached ADU of at least 1,200 square feet. Gov't Code 65852.2(a)(1)(D) and 65852.2(c)(2)(B).
 - See draft ordinance Section 17.70.060.I
 7. Minimum Size/Placement Guarantee.
 - The City may not impose unit size, lot coverage, FAR, open space, or lot size requirement that would prohibit a detached ADU with four-foot side and rear setbacks, 16 feet of height, and 800 square feet of floor area. Gov't Code 65852.2(c)(2).
 - See draft ordinance Section 17.70.060.I

8. Setbacks.

- The City must allow four-foot setbacks from side and rear property lines. Gov't Code 65852.2(c)(2). Gov't Code 65852.2(c)(2)(C) and 65852.2(e)(1)(B).
- See draft ordinance Section 17.70.060.I

9. Converting and Replacement Existing Structures.

- The City must allow an existing structure to be converted to or replaced with an ADU, regardless of whether it conforms with setback or building separation standards. Gov't Code 65852.2(a)(1)(D)(vii).
- See draft ordinance Section 17.70.060.I

10. Height.

- The City must allow an ADU height of at least 16 feet. Gov't Code 65852.2(c)(2)(C) and 65852.2(e)(1)(A).
- See draft ordinance Section 17.70.060.I

11. Replacement Parking.

- The City may not require replacement parking for existing structure converted into or demolished to accommodate an ADU. Gov't Code 65852.2(a)(1)(D)(xi)
- See draft ordinance Section 17.70.060.K

Proposed Amendments in Response to Community Feedback

Through the course of several meetings with local design professionals and community members, the City received suggestions for ordinance revisions to improve the livability and feasibility of ADUs, as well as to improve protection of historic district resources. Community members also asked for clarification on the procedures and language of the ordinance. A summary of comments and corresponding amendments is provided below.

1. Deviations from Standards.

- Comment: Clarify the process to approve an ADU that deviates from standards. Clarify the review process for an ADU that is part of a broader project (such as a new garage).
- Response: Design review would be required for ADUs that do not comply with Objective Design Standards (including H District design standards), and variance would be required for ADUs that do not comply with Development Standards (such as floor area, height, setbacks and building separation). The presence of an ADU would not exempt a project that otherwise requires design review (such as a new garage, new addition with expansion of living area for the primary dwelling). See draft ordinance Section 17.70.060.C.

2. Development Standards: Height

- Comment: Clarify height limitation for an ADU with a 6:12 roof pitch. Clarify measurement of wall height and consider increasing permitted wall height to 14 feet to allow adequate headroom for an ADU constructed above a garage.
- Response: The ordinance would increase the permitted wall height in an H District to 14 feet, clarify that wall height is measured to top plate, and maintain a peak height of 16 feet (for an ADU with a 4:12 roof pitch). For steeper roofs, the ordinance clarifies that the 20 foot height limitation applies to ADUs with a pitch of 6:12 and greater. See draft ordinance Section 17.70.060.H.

3. Development Standards: Height outside of H Districts

- Comment: Outside of a historic district, allow 2-story ADUs; eliminate the wall height standards and allow increased height that scales in relation to the property line setback.
- Response: This feedback was incorporated into the draft ordinance which eliminates the wall height standard for ADUs outside of a historic district and allows for a peak height of 16-20 feet if located within five feet of a side or rear property line, and peak height of 20-24 feet if located seven or more feet from a side or rear property line. See draft ordinance Section 17.70.060.H.

4. Separation between Buildings.

- Comment: the requirement for a 10 feet separation between buildings causes hardships, and the criteria to allow a reduction to 5 feet should be clarified.
- Response: the required separation is reduced to 5 feet, which was the required separation prior to the 2019 amendment. See draft ordinance Section 17.70.060.I

5. Design Standards: Height in Relation to Primary Structure (outside of H District)

- Comment: The restriction that prevents the height of an ADU from exceeding that of the home is unclear and questioned if it is necessary.
- Response: This requirement would be eliminated for ADUs outside of an H District.

6. Design Standards: Dormers.

- Comment: The limitation of dormers limited to 30% of the wall expanse below hinders the livability of ADUs above a garage.
- Response: This limitation would be increased to 66%; see draft ordinance Section 17.70.060.J

7. Design Standards: Gable Orientation

- Comment: The current language about orientation of gable ends is confusing and vague.

- Response: The proposed ordinance clarifies this design standard to address the orientation of the ridge; see draft ordinance Section 17.70.060.J
8. Decks and Balconies.
- Comment: clarify if decks and similar appurtenances can project into required yards; address privacy concerns related to second story balconies or decks.
 - Proposed ordinance allows ground level decks and similar appurtenances to be located four feet from side or rear property line. Second story decks and balconies would be setback at least ten feet from a side or rear property line adjoining a single-family or two-family dwelling. See draft ordinance Section 17.70.060.I and J.
9. Design Standards: Historic Districts
- Comment: The design standards do not adequately protect historic resources.
 - Response: An additional standard was added that prevents any alteration of historic structure facade that faces a public street; see draft ordinance Section 17.70.060.J.6

Further Amendments Proposed

In addition to amendments required for alignment with State law and in response to community feedback, the following addition amendments are proposed:

1. Amendments to Accessory Use Classifications. The current ADU classification is revised for consistency with the State statute, and four sub-classifications of ADUs are defined in order to clarify the applicability of zoning regulations.
2. Building Materials. Staff proposes amending the H District Design Standards to allow fiber-cement siding in addition to wood, as this type of materials closely replicates the appearance of wood (particularly as viewed from a distance) and is highly durable, with lower long-term maintenance costs.

Suggestions Considered but not Incorporated

The City received a number of comments and suggestions which were considered but not reflected in the draft ordinance. A summary of comments and rationale is provided below.

1. Allow two-story ADUs
 - Comment: The City should either allow a 2-story ADU or not. The dormer requirements etc. can result in tortured or bad design.
 - Response: There seems to be a strong community preference to retain the form and appearance of a 1 or 1.5 story ADU in the historic districts. This objective may be achieved with the proposed wall height and peak

height limitations. Outside of H Districts, standards would be revised to allow two-story ADUs subject to certain setback requirements.

2. Aesthetic Requirements for ADUs in an H District.
 - Comment: The City should not require ADUs to match or copy the primary dwelling, as it stifles originality and dilutes the historic fabric of the neighborhood.
 - Response: This comment was considered and requirements were relaxed for areas outside of a Historic District. In the absence of design review, however, criteria that ensure a compatible form and materials can help to minimize adverse impacts to historic resources and the character of the historic district, and do not necessarily preclude original design.
3. Screening ADUs in a Historic District.
 - Comment: Require or encourage screening for an ADU in the historic district that is located to the side of a primary structure.
 - Response: This suggestion was considered but was not included in the draft ordinance. Staff is concerned about the potential for unanticipated consequences such as failed or overgrown landscaping, inappropriate fencing, and property maintenance concerns. Further, landscaping is unlikely to fully screen a new building addition or structure measuring at least 16 feet tall and could have the reverse effect of drawing attention to the ADU.
4. Findings of Consistency with Secretary of Interior's Standards (H District).
 - Comment: The City should conduct a review of an ADUs compliance with the Secretary of Interior's Standards, within the confines of the law.
 - Response: If an ADU is proposed that does not comply with the design or development standards, it would be subject discretionary review either through design review or a zoning variance. In such an instance, if located within an H District, the ADU may be reviewed for compliance with the Secretary of Interior's Standards. However, such a review is not permitted for a ministerial permit, as issuance of the permit is contingent on compliance with adopted objective standards and would not be affected by staff findings.

Consistency with the General Plan

The proposed amendments to the Benicia Municipal Code are consistent with the following Goals and Policies of the Benicia General Plan:

- Goal 2.1 Preserve Benicia as a small-sized city.
 - 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.
 - Policy 3.7.1: Ensure that new development is compatible with the surrounding architectural and neighborhood character.

- Housing Element Goal 1: Goal 1: Benicia shall be an active leader in attaining the goals of the City’s Housing Element.
 - Policy 1.04: The City will review and revise regulatory standards necessary to comply with State Housing law.

California Environmental Quality Act

The project is exempt from environmental review under California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15282(h) 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.

Next Steps

Solano Airport Land Use Commission

Pursuant to the Public Utilities Code (PUC) Section 21676, any local agency whose general plan includes areas covered by an airport land use compatibility plan shall refer a proposed zoning ordinance or building regulation to the airport land use commission for review. The airport land use commission shall determine whether the proposal is consistent with the adopted airport land use compatibility plan. Benicia falls within the jurisdiction of the Travis Air Force Base Airport Land Use Compatibility Plan; therefore, proposed zoning amendments must be reviewed by the Solano County Airport Land Use Commission (ALUC).

The City of Benicia anticipates that the proposed amendments will be heard by the ALUC in January 2019; however, a hearing date has not yet been set. The purpose of the hearing would be to evaluate the consistency of the proposed zoning amendments with the Travis Air Force Base Airport Land Use Plan.

Local Adoption Hearings

Adoption of an amendment to the Zoning Ordinance requires a noticed public hearing and recommendation of the Planning Commission pursuant to Government Code Section 65854 and 65855. A public hearing on the proposed ordinance has been

tentatively scheduled for the Planning Commission's regular meeting of January 9, 2020.

Subsequent to the Planning Commission's recommendation, the City Council must conduct two readings on the proposed amendment. If adopted at the second reading, the amendments would become effective 30 days later.

Attachments:

1. Draft Resolution with Exhibit A
2. Summary of Revisions to State Statute
3. Updates to State legislation for ADUs (Government Code Section 65852.2 and 65852.22)
4. Summary of Stakeholder Feedback, August and October 2019.
5. Correspondence from Brandon Marshall,
6. Summary of Stakeholder Feedback, November 14, 2019
7. Mark-up of Current Regulations

For more information contact: Suzanne Thorsen, Principal Planner

Phone: 707.746.4382

E-mail: sthorsen@ci.benicia.ca.us