



**AGENDA ITEM  
PLANNING COMMISSION  
JUNE 14, 2018  
BUSINESS ITEMS**

**TO :** Planning Commission

**SUBJECT :** **AMENDMENTS TO TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE AND DOWNTOWN MIXED USE MASTER PLAN TO AMEND REGULATIONS FOR ACCESSORY DWELLING UNITS, AS WELL AS ADDITIONAL CLARIFYING AMENDMENTS, AFTER A DETERMINATION THAT THE PROJECT IS EXEMPT FROM CEQA**

**EXECUTIVE SUMMARY:**

The proposed project is an amendment to Title 17 (Zoning) of the Benicia Municipal Code (BMC) and the Downtown Mixed Use Master Plan (DMUMP) to amend regulations for accessory dwelling units including associated clarifying and clean-up amendments. The proposed amendments would modify the definitions and Tables 4.1 through 4.4 of the DMUMP and modify BMC Sections 17.70.060 (Accessory Dwelling Units), 17.12.030 (Definitions), 17.16.080 (Accessory Use Classifications), 17.70.050 (Nonresidential Accessory Structures), 17.70.280 (Manufactured Homes) and Chapter 17.74 (Off-Street Parking and Loading Regulations). The amendments will bring the City of Benicia into compliance with recent changes to State statute, change the type of review applied to new ADUs, modify size and setback requirements for accessory structures, and establish new design standards for ADUs. Additional amendments to the Zoning Ordinance are proposed for clarification and alignment including definitions for construction trailer and parking, and amendments relating to applicability of small-car parking and specification of permitted vehicle parking surfaces.

The Historic Preservation Review Commission conducted a public hearing and recommended approval of the proposed amendments during a public hearing on May 24, 2018.

**RECOMMENDATION:**

Discuss the proposed draft text amendments, accept public comments, and adopt a resolution recommending that the City Council approve amendments to Benicia Municipal Code Title 17 and Downtown Mixed Use Master Plan pertaining to accessory dwelling units, after recommending that the project is exempt from CEQA.

**OVERVIEW:**

The State of California has changed its housing law through a series of amendments to facilitate the production of new Accessory Dwelling Units (ADUs), including requiring local agencies to allow such units on all residentially-zoned lots without discretionary review, streamlining



processes and creating exemptions for parking. The changes reflect the California State Legislature's finding that ADUs are an essential component of California's housing supply that provide additional rental stock and housing for family members, students, the elderly, in-home health care providers, people with disabilities and others at below market prices within existing neighborhoods.

The City of Benicia must update its zoning regulations for ADUs to come into compliance with State housing law. Due to the extensive nature of changes required, and to ensure thorough evaluation of proposed amendments, the city conducted a study session with the Planning Commission in March 2018 and two subsequent study sessions with the Historic Preservation Review Commission in March and April 2018. The outcome of these study sessions informed the current draft which is the subject of this evening's public hearing.

### **BACKGROUND:**

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

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

The proposed zoning amendments will bring the City of Benicia into alignment with State regulations regarding accessory dwelling units. While there are many detailed elements to the State regulations, key components will affect the City's local ordinance:

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



The draft amendments, which were presented during study sessions with the Planning Commission and HPRC, are included as attachments to this staff report.

#### *Relevance to Historic Districts*

The State requires all ADUs to be approved through a ministerial permit (without the exercise of individual judgment or discretion), even if they are on the same property as a historic structure or would be attached to a historic structure. This means that Benicia cannot require design review for ADUs, regardless of whether they are new detached buildings, attached additions, or conversions of existing structures. In the past, design review has been required for any exterior change or new accessory structure in the historic district. Moving forward, the city must approve ADUs through a building permit procedure if they can meet “checklist-type” criteria. This amendment would establish standards to ensure the compatible development of new accessory dwelling units citywide, especially in the historic districts.

#### *Planning Commission Study Session*

During the Planning Commission study session on March 8, 2018, the Commission heard a presentation regarding the status of State law and overview of proposed changes, and accepted public comment. Feedback and public comment related to the following issues:

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

#### *Historic Preservation Review Commission Study Sessions*

The Historic Preservation Review Commission (HPRC) conducted two study sessions regarding ADUs, primarily focused on the topic of design compatibility in the residential setting including height, bulk and design standards.

On March 22, 2018 the HPRC received public comment and provided feedback to staff on the following topics:

- Building height to accommodate a second story ADU in detached structures
- Roof pitch
- Floor area
- Building form and detailing
- Building additions
- Placement of ADUs, both detached and building additions
- Lot coverage flexibility for lots smaller than 4,000 square feet.



On April 26, 2018 the HPRC conducted a second study session to follow up on suggestions related to floor area, height, design standards, and lot coverage on constrained parcels and provided the following direction:

- Regulate height of detached accessory buildings on a scale that accounts for roof pitch (up to a height limitation of 20 feet for roof pitch exceeding 6:12).
- Require horizontal wood siding for detached ADUs in a historic district.
- Disallow dormers facing adjoining lots for ADUs in a historic district.

The proposed amendments incorporate the recommendations of the HPRC relating to design standards, ADU placement, and lot coverage on constrained parcels.

#### *Historic Preservation Review Commission Public Hearing*

On May 24, 2018 the HPRC conducted a public hearing on the proposed amendments. No members of the public provided comment. Commissioners asked clarifying questions about the timing of construction, procedure for adoption, and CEQA. Staff responded that an ADU may be constructed prior to the primary residence under certain circumstances; that adoption is subject to a Planning Commission public hearing and City Council approval; and explained the applicability of CEQA exemptions since amendments to the ADU regulations are specifically exempt per CEQA Guidelines Section 15282(b).

Commissioners recommended amendments to the ADU Design Standards, which are incorporated in the proposed draft. These include revising the “connector” offset from a primary building wall in a Historic District from three feet (3’) to eighteen inches (18”), to modify language regarding window proportions for an ADU in the Historic District, and to move proposed standards regarding dormers, orientation of a gable end, and roof pitch to citywide applicability in the interest of minimizing bulk and reducing shadow effects on adjoining property.

### **KEY TOPIC AREAS**

#### *Parking*

The City is limited in where it can apply the parking requirement for ADUs due to the exemptions established in State law. These exemptions would apply to most of the City including areas within ½ mile of a transit stop, the Downtown Historic District and Arsenal Historic District, and conversion of existing space within an existing residence or accessory structure. Due to the distribution of SolTrans commuter routes throughout the city, all but the far northwest area of Southampton and a portion of the Waters End neighborhood (appx. 250 parcels) would be exempt from ADU parking requirements.

During the Planning Commission study session, Commissioners expressed a preference to have a consistent standard for parking citywide. As a result, the proposed amendments eliminate the ADU parking requirement.

#### *Junior ADUs*

Jurisdictions are authorized, but not required, to adopt regulations for “Junior Accessory Dwelling Units” which are units that do not exceed 500 square feet within a residential structure



and consist of a bedroom and efficiency kitchen. A Junior ADU may have a shared or independent bathroom.

The proposed amendments incorporate Junior ADUs into the definition of Accessory Dwelling Unit. The proposed regulations would not impede development of Junior ADUs, would establish consistent standards for criteria such as owner-occupancy requirements, and would limit development of ADUs to one unit per residential lot consistent with the intent of the ordinance. Additionally, classification of Junior ADUs as accessory dwelling units would allow the Building Official to apply recently-enacted building code standards to the development of these units.

Staff recommends that the ADU regulations be evaluated approximately one-year following adoption of the ordinance. This would include evaluation of permitting and zoning implementation related to ADUs and recommendations for any future amendments that would be appropriate for this newly-defined housing type.

#### *Unit Size*

The City is not permitted to adopt regulations that would be unnecessarily burdensome or would unreasonably restrict the ability of homeowners to construct ADUs. The Department of Housing and Community Development (HCD) has provided guidance regarding unit sizes. Local regulations must at least allow for an efficiency unit as defined in Health and Safety Code Section 16958.1 (150 square feet). For maximum floor areas, HCD refers to the state code that limits attached ADUs to 50 percent of existing living area or 1,200 square feet, and limits detached ADUs to 1,200 square feet. The City may adopt a maximum unit size below these thresholds as long as the standard is not burdensome. HCD has stated that typical maximum unit sizes range from 800 square feet to 1,200 square feet.

Staff does not propose adoption of a minimum unit size, as this factor is already controlled by building code standards. Table 1 below summarizes current and proposed ADU unit size limitations. The actual permitted size of an ADU would additionally be controlled by the required yards, maximum lot coverage and minimum landscaping standards of the zoning district in which it is located.

Table 1: Existing & Proposed ADU size limitations

	Current Code - BMC	Current DMUMP	Proposed Draft
Detached Unit	800 square feet or the size of the primary dwelling unit, whichever is less.	No Max. (TC, TC-O) 700 s.f. (NG) 1000 s.f. (NG-O)	1,000 square feet or the size of the existing primary dwelling unit, whichever is less.
Attached Unit	800 square feet or the size of the primary dwelling unit, whichever is less.	N/A	50 % of floor area of primary dwelling or 1,200 square feet, whichever is less; except, that for a house $\leq$ 1,200 square feet, the attached ADU may have a floor area of 600 square feet



### *Unit Height*

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

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

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

The HPRC focused its discussions on design considerations and discussed the topic of building height in depth. Commissioners commented that two-story structures may create visual impacts that the city doesn’t anticipate and emphasized the importance of compatibility with residential areas. After some discussion, the HPRC recommended that the height limitation be established on the basis of wall height and roof pitch, which would allow second-story build-out for residential purposes but would also help to address concerns related to bulk and height.

Table 2: Proposed Height Standards

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

State statute authorizes conversion of any accessory structure to an ADU; as a result, any accessory structure has the potential to become an ADU. Therefore, height standards will be contained in the Accessory Structures (BMC 17.70.050) regulations and would apply to all accessory structures including detached ADUs.

### *Design Standards*

ADUs must be approved through a ministerial (non-discretionary) process without the exercise of independent judgment. Cities are encouraged to develop objective design standards that relate to accessory dwelling units.



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

During the HPRC study sessions, commissioners expressed a preference to allow for design flexibility citywide, while ensuring that new ADUs in the historic district are of an appropriate appearance and scale to avoid adverse impacts on the character of the district.

The design standards are organized to include a set of standards that applies citywide, and an additional subset that applies only in a historic district. The design standards are provided in proposed BMC 17.70.060.E.

#### *Ownership/Rental*

The city's current ordinance requires that an owner-occupancy deed restriction (requiring that the property owner must occupy either the primary dwelling or ADU) must be recorded prior to issuance of building permit for an ADU.

During the Planning Commission study session, some members of the public commented in opposition to the deed restriction citing the interest of creating additional housing units and easing restrictions. The owner occupancy requirement exists to discourage absentee landlords, to support and encourage property maintenance, and to ensure that ADUs remain accessory to the primary dwelling both in ownership and function. State law allows Benicia to retain this requirement and it is retained in the draft amendments, with an exception that allows the deed restriction to be suspended when necessary for reasonable accommodation.

The City may also set a minimum lease period for ADUs to ensure second units are not used as short-term rentals which do not increase the housing supply or promote affordable housing. The draft amendments propose a minimum 30-day lease period for ADUs and two clarifying deed restriction requirements consistent with State law:

- The rented unit shall not be rented for any period less than thirty days at a time.
- The ADU shall not be sold or conveyed separately from the primary dwelling.
- The property owner must occupy either the primary dwelling or ADU.

## **SUMMARY OF PROPOSED AMENDMENTS**

### *Accessory Dwelling Units BMC Section 17.70.060*

- General Alignment. Improved consistency between the Zoning Ordinance and Downtown Mixed Use Master Plan including applicability, setbacks and separation requirements.
- Permits. Eliminated separate permit and discretionary review requirements in compliance with State law.
- Floor Area. Amended floor area standards to align with the State ordinance subsequent to additional feedback received through study sessions.
  - Attached units: Citywide, the floor area of an ADU shall not exceed 50% of the floor area of the primary dwelling or 1,200 square feet whichever is less.



However, if the primary dwelling has an existing floor area of less than 1,200 square feet, an attached accessory dwelling unit may have a maximum floor area of 600 square feet.

- Detached units: Citywide, the total floor area of an ADU shall not exceed 1,000 square feet or the size of the existing primary dwelling unit, whichever is less.

*Note: the Downtown Mixed Use Master Plan establishes separate footprint limitations which apply in combination with BMC 17.70.060.*

- Bulk. Revised standards to clarify applicability of district standards and to reflect current State law relating to conversion of existing buildings. An additional provision would allow a 5% increase over the zoning district lot coverage standard if necessary to accommodate an ADU.
- Height. Revised height standards for ADUs to default to ancillary building standards in DMUMP or Accessory structures standards in BMC 17.70.050 (Accessory structures). Design standards state that in a historic district, an ADU shall not exceed the height of the primary dwelling.
- Foundation. Established requirement that ADUs shall be located on a permanent foundation.
- Design Standards. Modified existing design standards consistent with State law. Citywide standards address overall consistency with the development in the immediate neighborhood. Additional standards for an H Historic Overlay District address the following: placement, building additions, building materials, colors, roof material and style, roof orientation and pitch, window proportions and style. The ADU standards for the H District were developed based on community and HPRC feedback in light of the requirement that ADUs be approved without design review.
- Parking. Eliminated parking requirement for ADUs consistent with State law. Parking shall not be required for ADUs within a historic district, within ½ mile of transit, or where part of an existing residence has been converted to an ADU; therefore, the city is not allowed to require off-street parking in most residential areas of the city.
- Deed Restriction. Clarified existing deed restriction requirements, added a minimum lease period of 30 days (to prevent use of ADU for short-term rental), and created an option to suspend the deed restriction when necessary for a reasonable accommodation.

#### *Definitions BMC 17.12.030*

- Added clarifying definitions.

#### *Accessory Use Classifications BMC 17.16.080*

- Modified definition of “accessory structure” to eliminate nonresidential distinction and align language within the ADU use classification. Under State statute, any structure may be converted to an ADU; therefore, a distinction for nonresidential accessory buildings is unneeded.
- Modified classification of accessory dwelling unit to also include junior ADUs as defined by state statute (“Junior accessory dwelling unit” means a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.)



*Accessory Structures BMC 17.70.050*

- Allowed accessory structure to be constructed before primary dwelling on parcels with site constraints.
- Modified height standards for accessory structures (based upon HPRC study sessions):
  - Fifteen (15) feet where the roof pitch is below 4:12.
  - Eighteen (18) feet where the roof pitch is between 4:12 and 6:12.
  - Twenty (20) feet where the roof pitch exceeds 6:12.
- Modified setback requirement from current sliding scale/daylight plane to standard 5 feet on rear or side property line and require 10 foot separation between accessory building and other buildings on a lot for consistency with DMUMP.

*Manufactured Homes 17.70.280*

- Removed limitation that allows these uses only in R districts for consistency with State law and allow in any district that allows single family dwellings.
- Added a statement precluding the application of local code in contradiction to State law.
- Removed location criteria for consistency with State law.
- Updated design criteria for consistency with ADU design standards.

*Off-Street Parking BMC 17.74*

- Clarified parking space dimension requirements and the applicability of small car parking (clean-up).
- Established standards for vehicle parking surfaces.

*Design Review BMC 17.108*

- Clarified language regarding exemptions and added ADUs to the list of project types that are exempt from design review.
- Established “exception to criteria” to address issues that allow for Community Development Director discretion but does not currently specify a process to allow or document such decisions.

*Downtown Mixed Use Master Plan*

- Added accessory dwelling unit as a use type in Tables 4.1 (Town Core Zone Allowed Land Uses and Permit Requirements), 4.2 (Town Core-Open Zone Allowed Land Uses and Permit Requirements), 4.3 (Neighborhood General Zone Allowed Land Uses and Permit Requirements) and 4.4 (Neighborhood General – Open Zone Allowed Land Uses and Permit Requirements).
- Created cross-references to BMC 17.70.060 Accessory dwelling units.
- Modified ancillary building height standards in Neighborhood General and Neighborhood General – Open zones to align with proposed amendments to BMC 17.70.050 Accessory structures.
- Added definition for Accessory Dwelling Unit to the Glossary, and delete unused definitions for Carriage Unit and Secondary Building.



## NEXT STEPS

Following the Planning Commission hearing, the proposed amendments will be presented to the City Council for a public hearing on adoption.

Staff recommends that the city establish a one-year review period following adoption of the amended regulations, when the effectiveness of the regulations may be evaluated and subsequent amendments can be adopted if appropriate. This recommended review period is reflected in the draft Resolution.

## GENERAL PLAN:

<b>General Plan</b>	Goal 2.1 Preserve Benicia as a small-sized city. <ul style="list-style-type: none"><li>➤ 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.</li></ul>
	Goal 3.7: Maintain and reinforce Benicia's small-town visual characteristics. <ul style="list-style-type: none"><li>➤ Policy 3.7.1: Ensure that new development is compatible with the surrounding architectural and neighborhood character.</li></ul>
<b>Housing Element</b>	Goal 1: Benicia shall be an active leader in attaining the goals of the City's Housing Element. <ul style="list-style-type: none"><li>➤ Policy 1.04: The City will review and revise regulatory standards necessary to comply with State Housing law.<ul style="list-style-type: none"><li>▪ Program 1.10: To encourage the development of second units, amend the Zoning Ordinance for second units (accessory dwelling units) and reduce fees. Modifications to City standards and procedures should include:<ul style="list-style-type: none"><li>• Eliminate or reduce the 6,000 square foot minimum parcel size for second units outside the Historic Districts (for inside Historic Districts see Program 1.11);</li><li>• Allow units above or adjacent to the garage of a primary housing unit;</li><li>• Reduce parking standards for lots with second units. For example:<ul style="list-style-type: none"><li>○ Allow exceptions to parking requirements for second units up to 400 square feet;</li><li>○ Allow for on-street parking spaces adjacent to the lot to count towards 50 percent of the parking requirement;</li><li>○ Eliminate the covered parking requirement for the primary residence, if an accessory dwelling unit is provided;</li><li>○ Allow one of the required parking spaces in the front or exterior yard setback; and</li><li>○ Allow tandem parking to meet the parking requirement for the primary residence and the accessory dwelling as</li></ul></li></ul></li></ul></li></ul>



	<p>long as both spaces are behind the front facade plane and do not create fire or safety hazards.</p> <ul style="list-style-type: none"><li>• Investigate additional reductions to sewer and water connection fees for second units; and</li><li>• Reduce or waive planning and building fees for affordable second units.</li></ul>
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**CEQA:**

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

The Planning Commission’s action will be a recommendation to the City Council.

**Attachments:**

1. Draft Resolution
2. Draft Amendments – redline
3. Draft Amendments – clean
4. HPRC Resolution No. 18-5
5. Planning Commission Excerpt Minutes March 8, 2018
6. Draft HPRC Excerpt Minutes March 22, 2018
7. Draft HPRC Excerpt Minutes April 26, 2018
8. Draft HPRC Excerpt Minutes May 24, 2018

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