

## Legislation Text

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**File #:** AC 18-020, **Version:** 1

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Public Hearing to consider a Consistency Determination (ALUC-18-05) for the proposed City of Benicia Accessory Dwelling Unit Ordinance with the Travis Air Force Base Airport Land Use Compatibility Plan. (Sponsor: County of Solano)

### **RECOMMENDATION:**

Determine that application ALUC-2018-05 (City of Benicia Accessory Dwelling Unit Ordinance) is consistent with the Travis Air Force Base Land Use Compatibility Plan.

### **DISCUSSION:**

#### **Introduction**

On January 1, 2018, new state legislation went in to effect mandating certain minimum requirements for any local zoning regulations pertaining to accessory dwelling units. The legislation rendered invalid any local regulations if they were not in complete conformance with the new state rules for secondary dwellings. The legislation also imposed several restrictions and requirements which local government must meet in any local ordinance regulating secondary dwellings. The legislation does permit local agencies to adopt secondary dwelling unit regulations with different size limitations, providing the local ordinances comply with all of the state's other requirements.

The City of Benicia wishes to adopt local regulations for Accessory Dwelling Units (See Attachment A and B). The City has prepared an ordinance which includes the mandated restrictions and requirements imposed by the State as well as standards permitted by the state legislation. The City is seeking a consistency determination for these items from the Airport Land Use Commission as required by the State Aeronautics Act. The proposed ordinance amendments are summarized below:

#### **Summary of ADU Ordinance** (from the City of Benicia Staff Report Attachment C)

##### *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.

These changes do not alter the intensity of density of development permitted on any parcel in the City of Benicia.

## **ALUC Jurisdiction**

The City of Benicia Accessory Dwelling Unit Ordinance is statutorily required to come before the ALUC for a consistency determination. These regulations apply to properties in various locations within the City of Benicia. The Travis Air Force Base Land Use Compatibility Plan (Travis Plan) is the only Airport Land Use Compatibility Plan which applies to the City of Benicia and thus the Benicia ADU Ordinance is reviewed in light of the Travis Plan.

## **REQUIRED TESTS FOR CONSISTENCY**

### **ALUC Review Requirements**

State law, under Section 21661.5 of the Public Utilities Code, requires that any proposed zoning regulations or revisions to the local zoning ordinance be reviewed for consistency with adopted airport land use compatibility plans.

The ALUC is concerned with those aspects of the proposed zoning changes which have the potential to be incompatible with the Travis Plan.

### **California Airport Land Use Planning Handbook**

The State Department of Aeronautics has published the California Airport Land Use Planning Handbook as a guide for Airport Land Use Commissions in the preparation and implementation of Land Use Compatibility Plans and Procedure Documents. Section 6.4.2 sets forth procedures for the review of local zoning ordinances and directs agencies to consider the topics listed in Table 5A, as follows:

### ***Zoning or Other Policy Documents*** (from Table 5A, CalTRANS Airport Land Use Planning Handbook)

*The Handbook lists the following topics for consideration when reviewing zoning or other policy documents.*

- *Intensity Limitations on Nonresidential Uses*
- *Identification of Prohibited Uses*
- *Open Land Requirements*
- *Infill Development*
- *Height Limitations and Other Hazards to Flight*
- *Buyer Awareness Measures*
- *Non-conforming Uses and Reconstruction*

The City of Benicia is situated in two compatibility zones - Compatibility Zone D and Compatibility Zone E. The compatibility factors for each zone are provided below.

#### Compatibility Zone D

The requirements for Compatibility Zone D are limited to the following compatibility factors:

- Intensity Limitations: No limit
- Identification of Prohibited Uses: No limit
- Open Land Requirements: None
- Infill Development: No Special requirements or limitations
- Height Limitations and Other Hazards to Flight:
  - ALUC review required for objects > 200 feet AGL
  - All proposed wind turbines must meet line-of-sight criteria in Policy 3.3.4
  - All new or expanded commercial-scale solar facilities must conduct an SGHAT glint and glare study for ALUC review
  - All new or expanded meteorological towers > 200 feet AGL, whether temporary or permanent, require ALUC review
  - For areas within the Bird Strike Hazard Zone, reviewing agencies shall prepare a WHA for discretionary projects that have the potential to attract wildlife that could cause bird strikes. Based on the findings of the WHA, all reasonably feasible mitigation measures must be incorporated into the planned land use.
  - Outside of the Bird Strike Hazard Zone but within the Outer Perimeter, any new or expanded land use that has the potential to attract the movement of wildlife that could cause bird strikes are required to prepare a WHA.
- Buyer Awareness Measures: None required
- Non-conforming Uses and Reconstruction: No requirements or limitations

#### Compatibility Zone E

The requirements for Compatibility Zone E are limited to the following compatibility factors:

- Intensity Limitations: No limit
- Identification of Prohibited Uses: No limit
- Open Land Requirements: None

- Infill Development: No Special requirements or limitations
- Height Limitations and Other Hazards to Flight:
  - ALUC review required for objects > 200 feet AGL
  - All proposed wind turbines must meet line-of-sight criteria in Policy 3.3.4
  - All new or expanded commercial-scale solar facilities must conduct an SGHAT glint and glare study for ALUC review
  - All new or expanded meteorological towers > 200 feet AGL, whether temporary or permanent, require ALUC review
  - Outside of the Bird Strike Hazard Zone but within the Outer Perimeter, any new or expanded land use that has the potential to attract the movement of wildlife that could cause bird strikes are required to prepare a WHA.
- Buyer Awareness Measures: None required
- Non-conforming Uses and Reconstruction: No requirements or limitations

## **CONSISTENCY ANALYSIS**

Staff has reviewed the proposed City of Benicia Accessory Dwelling Unit Ordinance for consistency with the applicable land use compatibility plans and our analysis is presented below.

### Intensity Limitations on Nonresidential Uses

Within Compatibility Zones D and/or E, there are no limitations on intensity for non-residential land uses. Furthermore, the proposed City regulations are not changing any residential density limitations or designating any new zoning districts. As a result the City of Benicia Accessory Dwelling Unit Ordinance is consistent with this provision.

### Identification of Prohibited Uses

There are no prohibited uses within Compatibility Zones D and E. Therefore, the City of Benicia Accessory Dwelling Unit Ordinance is consistent with this provision.

### Open Land Requirements

Compatibility Zones D and E have no open land requirements for development. As a result, the City of Benicia Accessory Dwelling Unit Ordinance is consistent with this criterion.

### Infill Development

The proposed regulations apply throughout the City of Benicia to properties which may or may not be considered infill locations. Infill development is sometimes afforded additional density or intensity when it is surrounding by existing development that does not meet the requirements of the Travis Plan. Since there are no density or intensity limitations within Compatibility Zones D and E, the infill issue is mute. No further consideration is required for this criterion and the regulations would be consistent with these criterion.

### Height Limitations and Other Hazards to Flight

1, 2 & 4. Height Review for Objects Greater than 200 Feet in Height

The City of Benicia Accessory Dwelling Unit Ordinance does not alter any maximum height requirements in the Benicia Municipal Code and so ALUC review of this item is not required.

3. Commercial Scale Solar Projects

The City of Benicia Accessory Dwelling Unit Ordinance does not alter any Commercial Solar regulations and as such, is consistent with the Travis Plan.

5 & 6 Projects within the Bird Strike Hazard Zone or the Outer Perimeter Area

The project lies outside of the Bird Strike Hazard Zone and the Outer Perimeter Area. As a result, the City of Benicia Accessory Dwelling Unit Ordinance  
Is not affected by these criteria and is consistent with the requirements of the Travis Plan.

Buyer Awareness Measures

The proposed regulations do not designate any new residential uses and do not involve any properties within Compatibility Zones A, B or C. The proposed project lies within Compatibility Zones D and E and outside of any noise contours of concern. As a result, Buyer Awareness Measures are not required by the Travis Plan, and the proposals are thereby consistent with the Travis Plan.

Non-conforming Uses and Reconstruction

The project is not authorizing any construction nor does it modify the non-conforming use provisions of the BMC. As a result, Non-conforming uses and reconstruction issues are not involved and the noise and outdoor entertainment proposals are thereby consistent with the Travis Plan.

In light of the above discussion, staff is recommending a consistency finding between the City of Benicia Accessory Dwelling Unit Ordinance and the Travis Plan.

**RECOMMENDATION**

Based on the analysis and discussions above, staff recommends that the Solano County Airport Land Use Commission find as follows:

**Determination:** Determine that application ALUC-2018-05 (City of Benicia Accessory Dwelling Unit Ordinance) is consistent with the Travis Air Force Base Land Use Compatibility Plan.

**Attachments:**

Attachment A: Referral Letter and Application

Attachment B: Accessory Dwelling Unit Ordinance

Attachment C: City of Benicia Planning Commission Staff Report