

## ACCESSORY DWELLING UNITS

The State of California adopted legislation that became effective January 1, 2017, to encourage property owners to increase the supply of ADUs. Senate Bill 1069 and Assembly Bill 2299 defined an accessory dwelling unit (ADU) and authorized a local agency to provide, by ordinance, for the creation of second units in single family and multifamily residential zones, otherwise a local agency can default to state-law provisions. If a local agency decides to adopt its own ADU ordinance, then state law requires that the ordinance include specified provisions regarding areas where ADUs may be located, standards (including the imposition of parking), and lot density – among other things. The State of California recently amended the law, Senate Bill 229 and Assembly Bill 494 became effective January 1, 2018 to clarify and improve various provisions of the state-law to promote the development of ADUs.

The laws are currently in effect, so if cities do not pass ordinances refining how these senate and assembly bills are implemented, the state law is the overriding regulation, even if it is in conflict with local land use ordinances and general plans. The City is currently subject to the state law until such time that a local ordinance is adopted. Senate Bill 831 is currently pending and if passed, will further restrict local authority to regulate ADUs and make it easier for homeowners to build an ADU to increase the housing supply. Some key changes proposed in the bill include prohibiting considering the square footage of an ADU when calculating the allowable floor area or lot coverage, reducing the processing time from 120 days to 60 days, and prohibiting a local agency from requiring off street parking spaces if a garage, carport, or covered parking structure is demolished or converted to an ADU. Should this bill pass, it is likely the City will have to amend the code in the near future to address the changes.

The following table illustrates the mandatory regulations of the state for ADUs and JADUs:

Description	State ADU Standards	State JADU Standards
<b>Building Size</b>	*Detached: 1,200 sq. ft. max.	500 sq. ft.
	*Attached: 50% of living area, max. 1,200 sq. ft.	(must be completely w/in space of (E) residential structure)
<b>Height</b>	*No maximum	No maximum
<b>Setbacks</b>	No setback required for existing garage converted to ADU or portion to ADU	N/A
	A setback of no more than 5' from the side and rear lot lines for an ADU constructed above a garage	(must be completely w/in space of (E) residential structure)
<b>Number of Bedrooms</b>	No maximum	No maximum
<b>Parking Required</b>	1 parking space per unit or bedroom, whichever is less  (may be in tandem or in setback area)	0 required for JADU

<b>Parking Required, cont.</b>	If garage, carport, or converted parking structure is demolished in conjunction w/ ADU or converted ADU, replacement space may be located in any configuration on the lot as covered space, uncovered space or tandem space or by use of mechanical parking lifts	
	<p><b>**0 parking spaces required if ADU:</b></p> <ul style="list-style-type: none"> <li>-is w/in ½ mile of public transit</li> <li>-is w/in architecturally &amp; historically significant historic district</li> <li>-is part of (E) primary residence or (E ) accessory structure</li> <li>-is in an area where on-street parking permits are required, but not offered to occupant of ADU</li> <li>-is located w/in 1 block of car share area</li> </ul> <p><b>**Possible to require parking due to impacts of ADU on traffic flow and public safety</b></p>	
<b>Minimum Property Size</b>	No minimum	No minimum
<b>Additional Standards</b>	Must approve ADU contained within (E) space of SFR or accessory structure if ADU has independent exterior access from (E) residence and side and rear setbacks are sufficient for fire safety	May share a bath w/ primary residence or have its own
	No passageway shall be required w/ construction of an ADU	Must have its own separate entrance

*\*City may provide additional restriction*

**Proposed Ordinance**

The following table illustrates the City’s proposed ordinance:

Description	Proposed ADU Standards Lots 20,000 sq. ft. or more	Proposed ADU Standards Lots 15,000 sq. ft. to 19,999 sq. ft.	Proposed JADU Standards
<b>Building Size Limitation</b>	Detached: Max. 700 sq. ft.	Detached: 700 sq. ft. max	500 sq. ft. max.  (must be completely w/in space of existing residential structure)
	Attached: 700 sq. ft. or 30% of living area, whichever is less	Attached: 700 sq. ft. or 30% of living area, whichever is less	
<b>Height Limitation</b>	Detached: One-story and 14 ft. max. above existing grade	Detached: One-story and 14 ft. max. above existing grade	None
	Attached: One-story or the height of the existing ridgeline, whichever is lower	Attached: One-story or the height of the existing ridgeline, whichever is lower	
<b>Number of Bedrooms</b>	No maximum	No maximum	No maximum
<b>Parking Required</b>	1 parking space per bedroom (may be in tandem on existing driveway)  *0 required if ADU:  -is within ½ mile of public transit  -is within architecturally & historically significant historic district  -is part of existing primary residence or existing accessory structure  -is in an area where on-street parking permits are required,	1 parking space per bedroom (may not be in tandem with the primary unit)  *0 required if ADU:  -is within ½ mile of public transit  -is within architecturally & historically significant historic district  -is part of existing primary residence or existing accessory structure  -is in an area where on-street parking permits are required,	0 required for JADU

<b>Description</b>	<b>Proposed ADU Standards Lots 20,000 sq. ft. or more</b>	<b>Proposed ADU Standards Lots 15,000 sq. ft. to 19,999 sq. ft.</b>	<b>Proposed JADU Standards</b>
	<p>but not offered to occupant of ADU</p> <p>-is located within 1 block of car share area</p> <p>* 1 parking space required if subject property is on a street that does not have a minimum 20 ft. clear travel lane</p>	<p>but not offered to occupant of ADU</p> <p>-is located within 1 block of car share area</p> <p>* 1 parking space required if subject property is on a street that does not have a minimum 20 ft. clear travel lane</p>	
<b>Setbacks</b>	<p>Must comply with underlying zone. If garage is converted to ADU, does not need to conform to setbacks</p> <p>5 ft. setback required for side and rear yards for ADU constructed above garage</p>	<p>Must comply with underlying zone</p>	<p>N/A</p>
<b>Minimum Property Size</b>	<p>20,000 sq. ft.</p>	<p>15,000 sq. ft. to 19,999 sq. ft.</p>	<p>No minimum</p>
<b>Attachment to Garage</b>	<p>Permitted</p>	<p>Permitted</p>	<p>Permitted</p>
<b>Owner Occupancy</b>	<p>Property must be owner occupied</p>	<p>Property must be owner occupied</p>	<p>Property must be owner occupied</p>
<b>Special Lot Restrictions</b>	<p>None</p>	<p>None</p>	<p>None</p>
<b>Additional Standards</b>			<p>-May share a bath w/ primary residence or have its own</p>

Description	Proposed ADU Standards Lots 20,000 sq. ft. or more	Proposed ADU Standards Lots 15,000 sq. ft. to 19,999 sq. ft.	Proposed JADU Standards
			-Must have its own separate entrance
<b>Processing Procedures</b>	Permitted-by-right, subject to City Manager or designee review.	Special permit required, subject to City Manager or designee review	Permitted-by-right, City Manager or designee review

## Accessory Dwelling Units - Frequently Asked Questions (FAQs)

- Q – Can a property have more than one ADU or JADU?

A – No. The City can impose limits on how many ADUs or JADUs are allowed on a lot. The proposed ordinance limits a lot to only have one ADU or JADU.

- Q – What is the maximum height of the ADU?

A – If the ADU is detached from the existing single family residence, the proposed ordinance requires the ADU to be one story in height and no more than 14 ft. above existing grade. A one-story structure does allow for a basement below. If the ADU is attached to the existing single family residence, the ADU must be one-story or the height of the existing ridgeline, whichever is lower. For example, if the existing single family residence is a two-story house, the addition of an ADU can only be one-story in height. If the existing single family residence is a one-story house, the addition cannot exceed the height of the existing ridgeline, whichever is lower.

Q – What is the approval process for ADUs contained within the existing structure of a residence or accessory structure?

A – ADUs in existing space of a single family residence or accessory structure must be approved regardless of zoning standards, including parking, subject to a non-appealable ministerial building permit. This is the state statute and cannot be changed.

Q – Will the construction of an ADU count towards the maximum allowable floor area and lot coverage?

A – Yes. Construction of an ADU must comply with the City's maximum allowable floor area and lot coverage requirements.

- Q – Is the City required to adopt an ADU ordinance?

A – No, the City is not required to adopt an ADU ordinance. However, if the City elects not to adopt a local ordinance, the City must comply with state standards.

- Q – Are ADUs required to go through the Neighborhood Compatibility process?

A – No. The state statute requires ADUs to be processed ministerially with no discretion. The proposed ordinance allows ADUs to be processed ministerially on lots 20,000 sq. ft. or greater. The ordinance allows ADUs to be processed with a Special Permit on lots between 15,000 sq. ft. to 19,999 sq. ft., with more restrictive development

standards, such as parking. The ordinance does not allow ADUs on lots less than 15,000 sq. ft. unless the ADU is contained within the existing space of a single family residence or accessory structure.

➤ Q – Is the property owner required to live on the property?

A – The proposed ordinance requires the property owner to live in either the single family residence or ADU. A covenant is required to be recorded against the property indicating so.

➤ Q – What is the difference between an ADU and a guest house?

A – A guest house is considered a habitable accessory structure per the municipal code without cooking facilities. A guest house is typically used by the occupants of the property and cannot be rented out. An ADU can have a full kitchen and by state statute can be rented out.

➤ Q – What are the parking requirements for ADUs?

A – State statute requires 1 parking space per ADU. However, 0 parking spaces are required if:

-is within ½ mile of public transit

-is within architecturally & historically significant historic district

-is part of existing primary residence or existing accessory structure

-is in an area where on-street parking permits are required, but not offered to occupant of ADU

-is located within 1 block of car share area

➤ Q – Can the City prohibit construction of ADUs on top of garage?

A – The City can apply height restrictions to new construction of an ADU. The proposed ordinance limits the height of a detached ADU to one-story and 14 ft. existing grade. For attached ADUs, the height is limited to the existing ridgeline or one-story, whichever is lower. Therefore, an ADU is permitted above a garage (if the garage qualifies as a basement), but with height limitations to mitigate potential impacts. However, existing space on top of the garage can be converted to an ADU.

➤ Q – With ADUs converted from a garage, and when an ADU is built over a garage; why the difference in setback requirements?

A. – This difference is due to the State desiring to increase the accessibility of garage conversions to ADUs without extensive reconstruction of existing structures. Per HCD's Accessory Dwelling Unit Memorandum, setbacks must not be required when a

garage is converted or when existing space (e.g., game room or office) above a garage is converted. Rear and side yard setbacks of no more than five feet are required when new space is added above a garage for an ADU. In this case, the setbacks only apply to the added space above the garage, not the existing garage and the ADU can be constructed wholly or partly above the garage, including extending beyond the garage walls.

- Q – City ordinance requires that HOA approval be obtained prior to issuance of building permits. How does the PVHA approval requirement in City Code impact the City’s by-right requirement to allow ADUs?

A - If a building permit is required to convert or add space to create an ADU, the building permit will not be issued until PVHA has approved the project.

- Q - Given that the ordinance does remove a right that residents with 10,000 to 14,999 square feet lots currently have, does the notice process need to be any different than our typical form of notice?

A - Because the Council is considering the adoption of a zoning ordinance, notice must be given pursuant to Government Code §65090. That section requires publication in at least one newspaper of general circulation within the jurisdiction of the local agency which is conducting the proceeding at least 10 days prior to the hearing.

- Q - Notice should also include notice about the effect of the new ADU ordinance on our existing second dwelling unit ordinance.

A - The City’s existing ordinance is void. The City is now bound by State law. The new proposed ordinance is to adopt a local provision. The question above is about noticing the affected property owners about changes that affect them; but actually, the ordinance this applies to all property owners. With the proposed ordinance, the City is not taking away any rights of property owners.

- Q - Because the ordinance does restrict rights in that sense, would that be a basis for a challenge that the ordinance does not comport with state law?

A - The City cannot prevent the construction of ADUs. But the City can apply development standards and may designate where ADUs are permitted (GC Sections 65852.2(a)(1)(A) and (B)). For ADUs that require an addition or a new accessory structure, development standards such as parking, height, lot coverage, lot size and maximum unit size can be established with certain limitations. However, the applicable standards and allowable areas must not be designed or applied in a manner that burdens the development of ADUs. Specifically, Government Code Section 65852.150 (b) states that “It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in

this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.”

Whether the City proposed ordinance comports with State law turns on the availability of properties in the square footage ranges designated in the ordinance. For example, if there are only a handful of properties that would qualify for a by-right ADU, there is a likelihood that the City’s ordinance might be successfully challenged.

- Q - Are attached ADU's over a garage subject to the neighborhood compatibility process?

A - No, if the property owner meets the underlying development standards for the property we have to approve the ADU pursuant to a ministerial process or by right. We note also that setbacks cannot be required when a garage is converted or when existing space (e.g., game room or office) above a garage is converted. Rear and side yard setbacks of no more than five feet are required when new space is added above a garage for an ADU.

- Q - Given that the existing grade measurement applies only to detached ADU's, should they also be subject to neighborhood compatibility?

A - The Neighborhood Compatibility process is a discretionary process and all ADU applications must be approved ministerially.

- Q - The existing grade measurement should be made more precise. In other words, address how height would be calculated over a garage built into a slope. Or, reference this to another code section if there is one.

A – Building height will be measured in accordance with the applicable provisions of Title 18 (Zoning Regulations).

- Q - Given that the Rolling Hills Code permits considerations of safety and privacy, couldn't the PVE permit consider safety as well as those factors that are currently considered in the neighborhood compatibility process?

A - As currently drafted, the ADU ordinance permits considerations of safety and privacy (the proposed ordinance requires on-site parking and restricts tandem spaces for lots located on narrow streets (20 ft. or less of unobstructed travel lanes) or lots greater than 20,000 sq. ft. to address fire truck and emergency vehicle access concerns). However, factors in the neighborhood compatibility process (such as protecting views and neighborhood character) are not included in these considerations.

On lots between 15,000 and 19,999 sq. ft., the director must find that the accessory dwelling unit has no significant adverse impact on the natural features of the land, is reasonably compatible with the existing neighborhood character in terms of the scale of development of surrounding residences, has no significant adverse impact on the privacy of adjacent properties and has no significant adverse impact on neighbors' existing views; and (6) the accessory dwelling unit complies with Subsections 18.04.130(A) and (C).

- Q - Can the City impose a minimum space for parking as Rolling Hills Estates has done?

A - Rolling Hills Estates requires that properties provide "at least two parking spaces enclosed entirely by permanent walls." Each space within that the garage must be 10' x 20'. PVE imposes a similar requirement for two enclosed parking spaces but does not limit those spaces as to size. The City can amend its municipal code to do so.

- Q - Can PVE impose a square foot requirement for driveway or tandem parking? For example, could a resident say his/her driveway supports parking, but there's no realistic way to actually park a car in the driveway for any length of time because the space is too small (thus, prohibiting an ADU)?

A - Yes. However, such a provision would apply to every property in the R-1 and R-M zone (18.04.030 and 18.08.020, respectively), not just properties pursuing an ADU. Having it specific to ADUs may appear as if the City is attempting to limit ADUs and thus potentially invite a challenge by the State. If this is a change the City Council would like considered, it is suggest that a study be completed to evaluate potential unintended consequences.

*Questions asked subsequent to the November 27, 2018 City Council Meeting*

- Q - What is the difference between the Health and Safety Code definition of mobile home and manufactured home?

A - The definition of mobile home is much broader than manufactured home and can include trailers and other recreational vehicles. Manufactured homes are not so broadly defined. Although transportable in sections, it is built on a permanent chassis and is designed to be used as a single-family dwelling. Mobile are not allowed per current ordinance and therefore, would not be acceptable to be used as an ADU.

Q - CA Government Code (D) (iii) reads: "The accessory dwelling unit is either attached or located within the living area of the proposed or existing primary dwelling or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling."

Does the statute's reference to "proposed" dwellings have unintended consequences that we have not fully addressed?

A - The code's reference to proposed dwelling is designed to capture those situations where the ADU is proposed as part of a larger development project. All the requirements would still need to be met.

- Q - Why are there are no setback requirements for ADUs on lots 15,000 sq. ft. to 19,999 sq. ft.?

A -The setback requirements for ADUs on lots 15,000 sq. ft. to 19,999 sq. ft. are addressed in General Provision B.2 which states, "any new construction of an accessory dwelling unit or junior accessory dwelling unit shall conform to setback, floor area, lot coverage, fees, charges and other zoning requirements generally applicable to residential construction in the zone in which the lot is located and to the applicable requirements of the city building code and shall be included with the primary residence in determining whether the lot meets those requirements."

- Q - Can ADUs be created on lots less than 15,000 sq. ft.?

A – Yes. The current section for Development Standards for Lots less than 15,000 sq. ft. reads: *Accessory dwelling units shall only be permitted on lots under fifteen thousand square feet if the accessory dwelling unit is contained within the existing space of a primary residence.*

According to Government Code Section 65852.2 (e): *Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a single-family residential zone one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.*

These provisions apply within all single family residential zones and ADUs within existing space must be allowed in all of these zones. Note: The City's ordinance allows ADUs on lots less 15,000 sq. ft. only if they are contained within the existing space of a primary residence. No additional parking or other development standards can be applied except for building code requirements.

- Q - Is the City required to adopt a JADU ordinance?

A - The City is not required to adopt a JADU ordinance. But there are benefits to allowing JADUs. As noted in the HUD Guidance Memo, JADUs provide a simple and affordable housing option. A JADU also "provides flexibility and an insurance policy in homes in case additional income or housing is needed. They present no additional stress on utility services or infrastructure because they simply repurpose spare bedrooms that do not

expand the homes planned occupancy. No additional address is required on the property because an interior connection remains. By adopting a JADU ordinance, local governments can offer homeowners additional options to take advantage of underutilized space and better address its housing needs.”

➤ Q - Can an ADU take the place of a garage for a proposed single-family residence?

A -Yes for existing residences; No for new residences.

The PVE municipal code defines an accessory building/structure as:

“Accessory building” means a subordinate building or a part of the main building on the same lot or building site, the use of which is incidental to that of the main building, and which is used exclusively by the occupants of the main building

Accordingly, a garage if detached is an accessory structure, if it is attached to the main structure, it is typically considered part of the main residence for purposes of setbacks. As the state law mentions garages directly, any discussion on whether they are exempt from the living area of the residence pursuant to the state code is a moot point. Attempting to adopt the state standards in regard to living area may create conflict within our code in the adoption of floor area and gross floor area.

In terms of applying a parking requirement to an ADU and how that would be done, there would customarily be one of several scenarios:

1. **If an applicant proposes a new residence with an ADU.** In this case, a property owner would be required to construct a garage, however the parking requirements for the ADU itself may be satisfied by the driveway. The ADU in this case could be attached to the main residence or detached, and must comply with the development standards in the ordinance accordingly.
2. **If an applicant proposes a new ADU with an existing residence and existing garage.** If an applicant proposes to construct the ADU within the area occupied by the garage, they may do so, and the applicant would not be required to construct a new garage, and use the driveway to satisfy the parking requirements for the ADU and the main residence. If they chose to leave the garage alone, and construct a detached ADU or an attached ADU to other parts of the residence, the parking requirement would be satisfied by the driveway as outlined in scenario

➤ Q – Does the code provision for setbacks, which reads, " a setback of no more than five feet from the side and rear lot lines shall be required..." opt to be less restrictive than required by the State? The State is allowing a maximum setback of 5', no more, so why not use that option? The chart presented in the Staff Report also states a 5' setback for side and rear yards required for ADU units built above garages, and other cities use this same language in their code to be as restrictive as the State allows.

A – For lots greater than 20,000 sq. ft., the setback must comply with State requirements; thus, PVE code reads, “Both attached and detached accessory dwelling units shall conform to the required setbacks of the underlying zone.” Thus, if the setback is greater than 5 feet, then 5 feet is the maximum setback the City can require. City Code states that setbacks are set forth in the covenants of record applicable to the lot; thus, a setback of less than 5 feet would be only allowed if covenants allowed. For ADUs on lots between 15,000 sq. ft. and 19,999 sq. ft., the setback shall follow the underlying zone as stated in Section B2.

- Q - Is there a reason that landscape and architectural review were left out of the proposed code?

A – Landscaping and maintenance thereof is addressed in other codes sections as well as the covenants of record applicable to the lot.

- Q - Can owner-occupancy in a house with an JADU be required?

A – Yes. This is a requirement pursuant to General Provision 10c.

- Q – Are JADUs allowed on all lots?

A – Yes, but must meet the provisions of Section F.

- Q – Can ADUs be restricted in relation to hillside area with high fire zones? Can the City avoid or use a discretionary process for high fire hazard areas?

A – The City cannot enact a total prohibition on ADUs despite its High Fire Risk designation as this would be contrary to the intent of the State law. The City addresses fire risk by prohibiting ADUs on streets that are less than 20 feet wide. In cities where ADUs are prohibited in High Fire Risk zones, the areas tend to be canyon areas with limited access. The City of Los Angeles initially proposed outright prohibitions in some hillside areas, but ultimately identified more specific criteria to address this based on addressing the health and safety issues associated with development of ADUs in Hillside neighborhoods with the importance of accommodating additional housing supply.

- Q - Can the City include “denial if detrimental to public health and safety or unreasonable privacy?”

A – Safety and privacy issues are addressed in the Special Permit approval process for ADUs on lots between 15,000 and 19,999 sq. ft. ADUs on lots greater than this are permitted by right, and ADUs on lots less than this can be approved only if contained within the existing space of a primary residence.