



REGULAR MEETING OF THE UPLAND PLANNING COMMISSION AGENDA

**September 25, 2019 at 6:30 PM
Council Chambers**

**ROBIN ASPINALL, CHAIR
GARY SCHWARY, VICE CHAIR
CAROLYN ANDERSON, COMMISSIONER
LINDEN BROUSE, COMMISSIONER
ALEXANDER NOVIKOV, COMMISSIONER
YVETTE WALKER, COMMISSIONER
VACANT, COMMISSIONER**

CALL TO ORDER OF THE PLANNING COMMISSION REGULAR MEETING

PLEDGE OF ALLEGIANCE

ROLL CALL OF THE PLANNING COMMISSION

Commissioners Anderson, Brouse, Novikov, Walker,
Vice Chair Schwary and Chair Aspinall

PRESENTATIONS

APPROVAL OF MINUTES

August 28, 2019

COUNCIL ACTIONS

September 9, 2019 and September 23, 2019

FUTURE AGENDA ITEMS

ORAL COMMUNICATIONS

This is the time for any citizen to comment on any items that are not listed on the agenda under "Public Hearings" but within the Planning Commission's purview. Anyone wishing to address the Planning Commission should submit a speaker card to the Planning Secretary prior to speaking. The speakers are requested to keep their comments to five (5) minutes. The use of visual aids will be included in the time limit. Under the provisions of the Brown Act, the Planning Commission is prohibited from taking action on items not listed on the agenda.

PUBLIC HEARINGS - None

BUSINESS ITEMS

1. Update and status report of previously approved Conditional Use Permit No. 11-05 for the event tent and landscaping maintenance issues at the Upland Hills Country Club (Mike Poland).

PUBLIC WORKSHOP

1. Public workshop on a draft ordinance regulating Accessory Dwelling Units for compliance with recent changes to State Law; State Government Code Section 65852.2 (Robert D. Dalquest).

COMMISSION COMMUNICATIONS

ADJOURNMENT

Adjourn to the next regularly scheduled Planning Commission meeting on October 23, 2019.

NOTICE TO PUBLIC: All maps, environmental information, and other data pertinent to this item are filed in the City of Upland Development Services Department and will be available for public inspection prior to the meeting at 460 North Euclid Avenue during normal business hours.

If you wish to appeal a decision of the Planning Commission, you must do so within ten (10) calendar days following the meeting. Please contact the Planning Division for information regarding the appeal procedure.

If you challenge the public hearing(s) or the related environmental determinations, in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Upland, at or prior to, the public hearing.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Division at 931-4305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.102-35.104 ADA Title II]

POSTING STATEMENT: On September 19, 2019, at least 72 hours prior to the meeting, a true and correct copy of this agenda was posted on the bulletin boards at 460 N. Euclid Avenue (Upland City Hall) and 450 N. Euclid Avenue (Upland Public Library) per Government Code Section 54954.2.



**MINUTES OF A REGULAR MEETING OF THE
UPLAND PLANNING COMMISSION HELD
WEDNESDAY, AUGUST 28, 2019
AT 6:30 P.M.**

CALL TO ORDER OF THE PLANNING COMMISSION REGULAR MEETING

Chair Schwary called the Regular Meeting of the Upland Planning Commission to order in the Council Chambers of the Upland City Hall at 6:30 P.M.

PLEDGE OF ALLEGIANCE

The pledge of allegiance was led by *Commissioner Brouse*.

ROLL CALL

MEMBERS PRESENT: Commissioners Anderson, Brouse, Novikov, Walker, Vice Chair Aspinall, and Chair Schwary

MEMBERS ABSENT: Commissioner Verrinder

ALSO PRESENT: Development Services Director and Planning Commission Secretary Dalquest, Contract Planning Manager Poland, Senior Administrative Assistant Davidson, Deputy City Attorney Shah

APPROVAL/MINUTES

Moved by *Commissioner Anderson*, to approve of the minutes of the Planning Commission meeting of June 26, 2019.

The motion was seconded by *Vice Chair Aspinall*.

The motion carried by the following vote:

AYES: *Commissioners Anderson, Brouse, Novikov, Vice Chair Aspinall, and Chair Schwary*

NAYS: None ABSTAINED: *Commissioner Walker*

ABSENT: *Commissioner Verrinder*

COUNCIL ACTIONS

Development Services Director Dalquest provided a brief follow up on the July 8, July 20, and July 22 City Council meetings, noting no items of interest to the Planning Commission were discussed. On August 12, 2019 the City Council considered appointment and reappointment to the Planning Commission as well as the extension of the term of Chair.

FUTURE AGENDAS

Contract Planning Manager Poland indicated that there will be three (3) Conditional Use Permits, one (1) old business item and one (1) study session on the proposed wireless telecommunications ordinance at the upcoming meeting.

Chair Schwary spoke about the Planning Commissioner term expirations and the process of interviewing new candidates.

Deputy City Attorney Shah spoke about the government code provisions which establish the means for appointing new Planning Commissioners and stated the open seats may remain filled by the Commissioners with expired terms.

**MINUTES OF A REGULAR MEETING OF THE
UPLAND PLANNING COMMISSION**

AUGUST 28, 2019

Chair Schwary indicated that Commissioner Brouse chose to remain on the Commission and that Commissioner Verrinder did not.

Chair Schwary spoke about his tenure as Chair and thanked the residents and fellow Commissioners for allowing him to serve, and staff for assisting him over the years.

ORAL COMMUNICATIONS

Chair Schwary stated this is the time for any citizen to comment on any items that are not listed on the agenda under “Public Hearings” but within the Planning Commission’s purview. Anyone wishing to address the Planning Commission should submit a speaker card to the Planning Secretary prior to speaking. The speakers are requested to keep their comments to five (5) minutes. The use of visual aids will be included in the time limit. Under the provisions of the Brown Act, the Planning Commission is prohibited from acting on items not listed on the agenda.

Councilmember Velto thanked *Chair Schwary* for his service to the City and community over the years.

Noting there were no further members of the public wishing to address the Commission, *Chair Schwary* closed the oral communications.

ELECTION

Commissioner Anderson nominated *Vice Chair Aspinall* to the position of Chair.

AYES: *Commissioners Anderson, Brouse, Novikov, Walker, and Chair Schwary*

NAYS: None ABSTAINED: *Vice Chair Aspinall*

ABSENT: *Commissioner Verrinder*

Newly elected *Chair Aspinall* call for nominations for the position of Vice Chair.

Commissioner Anderson nominated *Commissioner Schwary* to the position of Vice Chair.

AYES: *Commissioners Anderson, Brouse, Novikov, Schwary, Walker, Chair Aspinall*

NAYS: None ABSTAINED: None

ABSENT: *Commissioner Verrinder*

Commissioner Schwary is elected Vice Chair of the Planning Commission.

RECESS

The Planning Commission recessed at 6: 44 p.m.

The Planning Commission reconvened at 6:48 p.m.

PUBLIC HEARINGS – None.

BUSINESS ITEMS

1. HOUSING ELEMENT UPDATE

STAFF:	Mike Poland, Contract Planning Manager
RECOMMENDATION:	Staff recommends that the Planning Commission receive and file the City’s Housing Element Update information as presented.

**MINUTES OF A REGULAR MEETING OF THE
UPLAND PLANNING COMMISSION**

AUGUST 28, 2019

Contract Planning Manager Poland introduced the item, noting that the item is for informational purposes only. He spoke about requirements and regulations; procedures; regional housing needs assessment numbers (RHNA); breakdown of RHNA numbers; methodology; number of units built from 2013 to date; affordability requirements; other housing element issues; rehabilitation of units; projects which were submitted and approved by the Planning Commission in the past year; number of units currently under construction; description of developments currently under construction; projects which have been approved, but not yet constructed; projects currently under review;

Commissioner Anderson inquired as to a property at 8th and Euclid.

In response to *Commissioner Anderson's* inquiry, *Contract Planning Manager Poland* noted that the permits have expired.

Commissioner Walker asked for staff to explain the importance of achieving the RHNA goals in housing numbers and what percentage meets the low to moderate income housing.

In response to *Commissioner Walker's* inquiry, *Contract Planning Manager Poland* indicated that state funding and CDBG grants are tied to RHNA numbers and that there are currently no low to moderate income housing plans.

Development Services Director Dalquest spoke in detail about RHNA numbers, goals and potential consequences to not following the Housing Element. He noted ADU's will more than likely be the optimum way to meet the low to moderate income housing numbers.

The Planning Commission received and filed the report.

2. RULES AND PROCEDURES FOR THE UPLAND PLANNING COMMISSION

STAFF:	Jamie Davidson, Senior Administrative Assistant
RECOMMENDATION:	Move to adopt a Resolution amending Rules and Procedures for the Upland Planning Commission as set forth in the resolution dated August 28, 2019.

Senior Administrative Assistant Davidson provided the details of the report, including past Commission action, prior approvals, and recommended changes.

Vice Chair Schwary inquired as to the major changes in the presented updated rules and procedures for the Planning Commission.

In response to *Vice Chair Schwary's* inquiry, *Senior Administrative Assistant Davidson* indicated that the numbering system of the Resolutions; adding the "Commission Communications" item to the agenda; changing the verbiage for the election and term of Commissioners; and adding certification language to the end of the resolutions are the major changes.

Chair Aspinall requested the certification language be updated and inquired as to the conduct of public hearings with regards to making a motion.

In response to *Chair Aspinall's* inquiry, *Deputy City Attorney Shah* indicated that after all evidence and testimony is collected, the Commission discusses the item, then any Commissioner is free to make a motion once a decision has been made.

Chair Aspinall requested item 7 be updated to provide for direction to make a motion.

Commissioner Novikov suggested that with regards to the election of new Commissioners, information be made available to be able to assist the Commission in determining qualifications prior to their election.

Deputy City Attorney Shah suggested that the information in the Commissioner applications annually be presented to the Commission at election time.

Discussion ensued related to the content and extent of the information submitted by Commissioners for consideration.

**MINUTES OF A REGULAR MEETING OF THE
UPLAND PLANNING COMMISSION**

AUGUST 28, 2019

Vice Chair Schwary moved to adopt a Resolution amending Rules and Procedures for the Upland Planning Commission as set forth in the resolution dated August 28, 2019, as amended to clarify that a motion may be made after the public hearing is closed; change certification language to be gender-neutral; to allow Commissioners submit biographical information on a form for consideration; and direct staff to provide said forms to the Commission one (1) month prior to the election date.

The motion was seconded by *Commissioner Anderson*.

The motion carried by the following vote:

AYES: *Commissioners Anderson, Brouse, Novikov, Walker, Vice Chair Schwary, and Chair Aspinall*

NAYS: None ABSTAINED: None

ABSENT: *Commissioner Verrinder*

3. HOLIDAY MEETING SCHEDULE

STAFF:	Jamie Davidson, Senior Administrative Assistant
RECOMMENDATION:	Staff recommends the Planning Commission reschedule the regular November and December Planning Commission meetings to November 13, 2019 and December 11, 2019.

Senior Administrative Assistant Davidson provided the details of the report, noting anticipated conflicts with the November and December regular meeting dates and provided staff's recommendation.

Deputy City Attorney Shah provided alternate arrangements such as changing the regular meeting dates of the Planning Commission and noted that this is a routine annual action taken by the Commission.

Commissioner Anderson moved to approve Staff's recommendation to reschedule the regular November and December Planning Commission meetings to November 13, 2019 and December 11, 2019.

The motion was seconded by *Vice Chair Schwary*.

The motion carried by the following vote:

AYES: *Commissioners Anderson, Brouse, Novikov, Walker, Vice Chair Schwary, and Chair Aspinall*

NAYS: None ABSTAINED: None

ABSENT: *Commissioner Verrinder*

STUDY SESSION

1. ACCESSORY DWELLING UNITS

Development Services Director Dalquest provided a background on accessory dwelling units (ADU) and indicated that the state laws have recently changed substantially with regards to ADU's. He also noted the presentation of a draft ordinance as it relates to ADU's prior to the formal public hearing process. He spoke about the details of the staff report, including the ADU ordinance; comparison chart; memorandum from the Department of Housing and Community Development; and the memorandum from HCD which clarifies Bills which were adopted. He also explained what an ADU is; intentions of ADU's; forms of ADU's; definitions under state law; size requirements; SB 1069, AB 2299, and AB 2406; AB 494 SB 229; summary of Bill requirements; purpose of the new ordinance; policy issues; potential areas for development; size provisions; occupancy requirements; rental prohibitions; public transit definition; parking; and state control. He indicated that he wishes to hold an additional study session in the future to further gauge public opinion.

**MINUTES OF A REGULAR MEETING OF THE
UPLAND PLANNING COMMISSION**

AUGUST 28, 2019

Chair Aspinall requested clarification on front setback requirements.

In response to *Chair Aspinall's* inquiry, *Development Services Director Dalquest* explained the setback requirements in relation to parking requirements and definitions.

Commissioner Anderson inquired if once the City is in compliance with their ADU ordinance, would they then be qualified for available grant funding.

In response to *Commissioner Anderson's* inquiry, *Development Services Director Dalquest* indicated that most importantly, the state will now allow ADU's to count towards RHNA numbers.

Commissioner Walker inquired if the ordinance addresses number of occupants in an ADU.

In response to *Commissioner Walker's* inquiry, *Development Services Director Dalquest* indicated that the size of the ADU is dependent on building code requirements.

Development Services Director Dalquest spoke about next steps.

The item was received and filed.

Chair Aspinall inquired as to the vacant position on the Airport Land Use Committee.

In response to *Chair Aspinall's* inquiry, *Development Services Director Dalquest* indicated that the position is currently vacant and looking to be filled.

Chair Aspinall thanked *Commissioner Brouse* and *Commissioner Verrinder* for their service to the Commission and the Community.

ADJOURNMENT

There being no further business to come before the Planning Commission, *Chair Aspinall* adjourned the meeting at 7:58 P.M., to the regular meeting of the Planning Commission on September 25, 2019, at 6:30 P.M.

Respectfully submitted,

Robert D. Dalquest, Secretary
Upland Planning Commission



MEMORANDUM

DATE: September 25, 2019

TO: Planning Commission

FROM: Robert D. Dalquest, Development Services Director

BY: Mike Poland, Contract Planning Manager

SUBJECT: Update - Upland Hills Country Club Tent – CUP-11-05

BACKGROUND

On June 26, 2019, the Planning Commission was provided with a report and presentation regarding the Tent at the Upland Hills Country Club. The Tent at the Upland Hills Country Club is a 4,000 square foot permanent structure which is utilized for banquets, wedding/receptions and corporate meetings. In December 2018, 1906 Inc. assumed responsibility for the Tent, along with the restaurant and concessions in the clubhouse.

The Tent was approved by the Planning Commission initially on May 16, 2012 via Conditional Use Permit No. 11-05, Resolution No. 4767, and later by Resolution No. 4791 (March 26, 2014), which further restricted the use, and clarified the Conditions of Approval. (See Attachments 1 & 2).

Part of the discussion with the Planning Commission on June 26th included information pertaining to complaints that the Planning Division, Police Department, and Code Enforcement personnel had been receiving relative to the operation hours and noise generating from the Tent.

The Conditions of Approval for the Tent relative to the hours of operation and noise restrictions include the following conditions from Planning Commission Resolution No. 4791.

- 2.5 Hours of operation shall be as follows: Seven (7) days a week from 11:00 a.m. to 10:00 p.m. All services (e.g., food and beverage services), ceremonial activities (e.g., bride and groom send-off, garter toss, bouquet toss, weddings in the gazebo, etc.), amplification (e.g.,

public address system, music, etc.), and other entertainment or organized activities shall commence no earlier than 11:00 a.m. and terminate no later than 10:00 p.m. Guests shall disperse from the event facility and parking lot by 11:00 p.m. Changes to the hours of operation shall require a conditional use permit modification at the discretion of the Development Services Director.

- 2.8 Noise emanating from the building shall be within the limitations prescribed by the City's Noise Ordinance. It is a condition of this approval that the applicant abide by Upland Municipal Code Section 9.40.060.B., which states, "Notwithstanding any specified noise level, it is also unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary, or unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person residing in the area, and it is unlawful for any person in ownership or control of any premises to knowingly permit a violation of this section upon the premises."

It should be noted that at any time that noise from the Tent becomes a nuisance or exceeds the limitations prescribed by the City's Noise Ordinance, Police Department and Code Enforcement personnel have been directed to direct the tent operator to shut down any and/or all activities associated with the excessive noise without exception.

Another matter that the Planning Commission was presented with was the outstanding Building Code issues. These issues related to inadequate ADA access from the Tent to the Club House and the lack of ADA compliance door handles for the restrooms in the Club House.

ISSUES/ANALYSIS

Since the June 26, 2019 Planning Commission meeting, Planning Division staff has met with personnel from the Upland Hills Golf Course as well as 1906 Inc to discuss and resolve the issues from the June 26th Planning Commission meeting.

In the last three months there have been two events held at the Tent. These events include the following.

- August 17, 2019 - 6:30 p.m. to 10:00 p.m. (Friday)
- August 25, 2019 - 2:00 p.m. to 6:00 p.m. (Sunday)

For the events listed above a single complaint was filed with the Police Department at 9:11 p.m. on August 17th. The complainant's reason was that the event's music was too loud and that the event was past the allowable hours of operation permitted by the Conditional Use Permit conditions of approval.

When personnel from the Police Department and Code Enforcement arrived on the site at 9:17 p.m., they discussed the complainant's issue with the Manager for the

Tent operator, 1906 Inc. (Claudia Santillanes) and the music was promptly turned off. It was not determined if the volume of the music exceeded the limitations of the City's Noise Ordinance. The event was allowed to continue until 10:00 p.m.

On September 3, 2019, staff from the Planning Division and the Building Division inspected the premises and found that the outstanding issues relative to inadequate ADA access from the Tent to the Club House and the lack of ADA compliance door handles for the restrooms in the Club House have been corrected to the satisfaction of the Building Official. Therefore, the final building inspection has been completed and the tent can continue to operate in accordance with the required Conditions of Approval.

CONCLUSION

Given the history of the Tent, it is recommended that the Planning Commission direct staff to continue to monitor the applicant's efforts to comply with CUP 11-05, take any necessary enforcement actions, and meet with the operator on a quarterly basis to discuss and resolve any current compliance and enforcement issues.

Attachments:

Exhibit A: Resolution No. 4767

Exhibit B: Resolution No. 4791

Exhibit C: Acceptance of Conditions

Exhibit D: Building Division Sign Off

Exhibit A
Resolution No. 4767



RESOLUTION NO. 4767

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF UPLAND APPROVING AN APPLICATION FOR CONDITIONAL USE PERMIT 11-05 TO ESTABLISH AN APPROXIMATELY 4,000 SQUARE FOOT PERMANENT EVENT TENT FACILITY ON REAL PROPERTY LOCATED NORTHWEST OF UPLAND HILLS DRIVE NORTH AND 16TH STREET AT THE UPLAND HILLS COUNTRY CLUB IN THE CITY OF UPLAND, CALIFORNIA.

THE PLANNING COMMISSION OF THE CITY OF UPLAND DOES HEREBY FIND, ORDER, AND RESOLVE AS FOLLOWS:

SECTION 1. RECITALS.

- A. Upland Hills F & B, a division of Z Golf, Inc. ("Applicant") filed an application with the City of Upland for a Conditional Use Permit (CUP 11-05) to establish and construct an approximately 4,000-square-foot permanent event tent facility located within the Upland Hills Country Club North community generally located on the north side of 16th street between Tanglewood Avenue and Campus Avenue, northwest of the intersection of Upland Hills Drive North and East 16th Street. The proposed event tent would be located on the grass area directly to the south of the existing country club banquet facility and adjacent to the existing parking lot, hereinafter referred to as the "Property" and legally described as follows:

Parcel 3 of Parcel Map No. 15459 in the City of Upland, County of San Bernardino, State of California, as per map filed in Book 191 Pages 5 to 8 of Parcel Maps, in the Office of the County Recorder of said County.

- B. The proposed project is located within the General Plan "Specific Plan (R/C-SP)" land use designation, where this event tent would contribute to and support an existing commercial area which is consistent with Goal 5 of the General Plan. Furthermore, with the implementation of conditions, the project will not have an impact on surrounding residences. Therefore, it is also consistent with Goal 4C of the General Plan which ensures that nonresidential types of land use developed in the City compliment and do not adversely affect the quality of life and health of residents. Additionally, the project site is located in the "Upland Hills Country Club Specific Plan" (SPR-6). According to the Commercial Development Standards outlined in the UHCC Specific Plan, the event tent structure can be deemed similar to other uses that require approval of a Conditional Use Permit by the Planning Commission, such as restaurants and outdoor recreational uses due to the nature of construction type and the banquet use.

- C. Upland Municipal Code Section 17.16.020(B) provides that the City Council has found and determined that because of the characteristics of certain uses, or because of the size of the area required for full development of such uses, the nature of the traffic problems incidental to their operation, the effect such uses may have on adjoining land uses and on the growth and development of the area in which it is proposed to locate any such use or uses, that it is impractical and detrimental to the peace, health, safety and general welfare to permit such uses in all areas in the city in any one or more zones wherever such zone or zones may exist in the city, and that the peace, health, safety and general welfare will be promoted if such uses are authorized only by conditional use permits in accordance with the procedures and standards hereinafter set forth.
- D. Upland Municipal Code Section 17.16.050(B)(1) provides that the Planning Commission, before it may approve a conditional use permit, must make a finding by resolution as hereinafter provided that the evidence presented shows that all of the following conditions exist in reference to the property being considered:
- (1) That the use applied for at the location set forth in the application is properly one for which a conditional use permit is authorized by this zoning code;
 - (2) That the use is necessary or desirable for the development of the community, is not contrary to the objectives of the general plan, and is not detrimental to existing uses or to uses specifically permitted in the zone in which the proposed use is to be located;
 - (3) That the site for the intended use is adequate in size and shape to accommodate the use and all of the yards, setbacks, walls or fences, landscaping and other features required in order to adjust the use to those existing or possible future uses on adjoining land in the neighborhood; and
 - (4) That the site for the proposed use relates to streets and highways properly designed and improved so as to carry the type and quantity of traffic generated or to be generated by the proposed use.
- E. Upland Municipal Code Section 17.16.050(B)(2) provides that the Planning Commission shall further have authority to require any such condition as it shall deem proper to safeguard and protect the public health, safety and general welfare, the existing and possible future uses on adjoining lands in the neighborhood, and the proper handling and regulation of traffic, and to ensure the eventual development of the property with respect to which the permit is granted in accordance with such plans as may be approved in connection with the granting of the application, including, but not limited to, the following:

- (1) That certain things are provided as an integral part of the development such as special setbacks and buffer strips, fences and walls, lighting fixtures planned and installed so as to illuminate the property but not constitute an annoyance to the occupants of the neighboring lands, surfacing of parking areas in accordance with city specifications, and installation of landscaping;
 - (2) That points of ingress and egress are so located as to conform to traffic patterns on streets and highways serving the property, and driveways and passageways are designed to expedite traffic flow within the property;
 - (3) That certain hours are observed in the conduct of certain activities and certain minimum standards are adhered to in respect to the creation of noise;
 - (4) That signs are kept to a specified maximum size and type and located in accordance with approved plans; and
 - (5) That all improvements and landscaping are maintained in accordance with reasonable standards as long as the use continues.
- F. An Initial Study was prepared for this project in accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines. The Initial Study evaluated the project, which includes the construction of a new approximately 4,000 square foot permanent event tent facility and establishing banquet services on the grass area directly to the south of the existing clubhouse and banquet facility and adjacent to the existing parking lot for the clubhouse.
- G. The Initial Study found that there is no substantial evidence that the project or any of its aspects, with the incorporation of mitigation measures, may cause a significant effect on the environment; therefore, a Draft Mitigated Negative Declaration was prepared.
- H. A Notice of Intent to Adopt a Mitigated Negative Declaration was published and the Draft Mitigated Negative Declaration was made available for public review and comment from April 13, 2012, to May 2, 2012, in compliance with Sections 15072 and 15105 of the State CEQA Guidelines. Comments were received and responses were provided, which have been incorporated into the Final Mitigated Negative Declaration.
- I. On May 16, 2012, at 6:30 p.m., the Planning Commission conducted a public hearing to consider the Final Mitigated Negative Declaration for the project and Conditional Use Permit CUP 11-05, after providing notice to the public in the manner and for the time required by law, and heard and considered both oral and written evidence.

SECTION 2. FINDINGS. The Planning Commission hereby makes the following findings and determinations in connection with the approval of the Project:

- A. Recitals A through F of Section 1, above, are true and correct.
- B. The Planning Commission reviewed and considered the Final Mitigated Negative Declaration (FMND), including all comments received, prior to considering approval of the project, and finds the FMND reflects the independent judgment and analysis of the Planning Commission. On the basis of the record before it, the Planning Commission finds that although the proposed project could have impacts, there will not be a significant effect because mitigation measures identified in the FMND mitigate any potential significant environmental impacts to a point where clearly no significant impact would occur. Changes have been required in, or incorporated into, the project that will mitigate or avoid potentially significant adverse impacts identified in the FMND and all mitigation measures contained in the FMND have been included in a Mitigation Monitoring Program to ensure implementation, as required by CEQA. The Planning Commission also finds that the project involves no potential for any adverse effect, either individually or cumulatively, on wildlife resources and makes a De Minimis Impact Finding pursuant to Chapter 1706 of the California Code of Regulations.
- C. The proposed project is located within the General Plan "Specific Plan (R/C-SP)" land use designation, where this event tent would contribute to and support an existing commercial area which is consistent with Goal 5 of the General Plan. Furthermore, with the implementation of conditions, the project will not have an impact on surrounding residences. Therefore, it is also consistent with Goal 4C of the General Plan which ensures that nonresidential types of land use developed in the City compliment and do not adversely affect the quality of life and health of residents.
- D. The project located in the "Upland Hills Country Club Specific Plan" (SPR-6). According to the Commercial Development Standards outlined in the UHCC Specific Plan, the event tent structure is can be deemed similar to other uses that require approval of a Conditional Use Permit by the Planning Commission, such as restaurants and outdoor recreational uses due to the nature of construction type and the banquet use. With implementation of certain conditions of approval that are necessary and proper to safeguard and protect the public health, safety, and welfare, the approval of a conditional use permit for the proposed use is warranted for the following reasons:
 - (1) The use applied for at the location set forth is properly one for which a conditional use permit is authorized by Section 3: Commercial Development Standards listed within the Upland Hills Country Club Specific Plan. According to the Commercial Development Standards outlined in the UHCC Specific Plan, the event tent structure is classified

as a banquet use in which the Administrative Committee has deemed similar to other uses that require approval of a Conditional Use Permit by the Planning Commission.

- (2) The proposed use is necessary or desirable for the development of the community and is not contrary to the objectives of the General Plan in that it is consistent with uses provided for in the Specific Plan land use designation and Upland Hills Country Club Specific Plan. Additionally, the project will contribute to and support an existing commercial area which is consistent with Goal 5 of the General Plan. The event tent has the potential to assist in increasing the economic success of the Country Club facilities in addition to increasing the quality and breadth of services provided at the business. Furthermore, the proposed location of the event tent will maintain an approximately 270 foot distance to the nearest residence, and the facility will be colored to match the adjacent clubhouse facility. As conditioned, the project is also consistent with Goal 4C of the General Plan which ensures that nonresidential types of land use developed in the City compliment and do not adversely affect the quality of life and health of residents. With implementation of conditions that are necessary to ensure that the proposed use is compatible with the community and to protect the public health, safety, and welfare, the proposed use will not be detrimental to existing uses or to uses specifically permitted within the Upland Hills Country Club Specific Plan. These conditions are included in full within the recommended resolution of approval and include, but are not limited to, the following:
- a. The potential for creating a venue that negatively affects the surrounding community or attracts an excessive number of people will be minimized with adequate controls related to maximum number of persons and the nature of the facility being limited to only private, pre-booked events. Live entertainment will be limited to a disc jockey, and non-amplified live entertainment. The applicant and operators will not use promoters to promote events.
 - b. As conditioned, event hours will be limited to Sunday through Thursday from 2:00 p.m. until 10 p.m. and Friday and Saturday from 2:00 p.m. until 11:00 p.m.
 - c. The event tent will only be allowed to conduct one additional event per day in conjunction with a maximum of two events per day allowed within the existing banquet facility. This would result in not more than three events per day.
 - d. The potential for disturbances to surrounding residences or excessive emergency services related to potential disturbances of the peace and excessive noise will be minimized since

management staff will be on site at all times during an event, adequate security will be in place for events with over 100 people, and mitigation measures will be taken to reduce the level of noise generation. As conditioned, the owner/manager will be required to monitor the volume within the structure to be sure it does not exceed the level necessary to achieve compliance with the City's noise ordinance. Also, noise attenuation boards will be installed around the speakers to reduce the level of noise escaping beyond the tent structure. Furthermore, the owner/manager will be responsible for ensuring the entertainment complies with the hours of operation. Lastly, the owner/manager will be responsible for providing a phone number for residents to complain about excessive noise and respond accordingly. Excessive noise complaints received by the City will result in the need for additional studies or potential modifications to the operational characteristics or structure.

- e. The potential for excessive emergency services related to potential overcrowding will be minimized since adequate occupancy controls will be in place. As conditioned, the management/operator will be required to admit guests into the banquet room only if they have a designated seat and will closely monitor and maintain the maximum occupancy of 269 people. Conditions also exist for modifications of the operations or occupant load if overcrowding becomes an issue.
 - f. The management/operator will be responsible for maintaining the parking lot and outdoor areas free of litter and debris. All live entertainment, music, and dancing will only occur inside the building, will not be audible from the adjacent properties, and will meet the limits as prescribed in the City's Noise Ordinance.
 - a. Adequate security lighting will be provided around the event tent structure to the satisfaction of the Police Department.
 - b. Fire sprinklers will be installed after a 90 day temporary occupancy during which time fire watch will be present at the cost of the applicant. No installation of fire sprinklers will result in no permanent occupancy granted and the removal of the tent.
- (3) The site and existing facilities are adequate in size and shape to accommodate the proposed use at this location, with implementation of certain conditions of approval and mitigation measures addressing the following,

- a. The proposed site and use will be in compliance with all applicable codes and requirements, including the California Building Code, California Fire Code, Americans with Disabilities Act, Upland Municipal Code, and all standard City department requirements. As conditioned, the applicant will be required to install fire sprinklers within a 90 period and will need to be sure adequate access is provided to existing restroom facilities.
 - b. As specified within the parking summary, the site has adequate parking supply to accommodate the proposed project and existing uses. Additionally, the project has adequate vehicular access provided by an existing driveway for all facilities. As conditioned, the management/operator are required to resolve any parking issues that arise and/or are disruptive to surrounding properties that occur as a result of the proposed use. The solutions could include, but are not limited to, modifying peak hours of operation or reducing the maximum number of persons permitted within the event tent.
 - c. The project includes mitigation measures to control the level of sound including on-site management staff monitoring of noise levels, posting of a clearly visible complaint number for residents, and the option to modify the operations and/or structure if needed to address the level of noise to meet the ordinance as defined within the Upland Municipal Code.
 - d. The site for the proposed use is accessible from public streets that are designed to carry the amount of traffic anticipated from the use.
- (4) The site for the proposed use relates to the streets and highways and is properly designed and improved so as to carry the type and quantity of traffic generated or to be generated by the proposed use since its access driveways are not being modified and the project is not anticipated to generate substantial amount of traffic. According to the final Mitigated Negative Declaration, there will not be any significant impact on the level of service along 16th Street or Campus Avenue. Furthermore, events will only occur in the afternoon and evening. Therefore, there will be no morning peak hour traffic increases at all.

SECTION 3. DETERMINATION. In light of the evidence presented at the hearing on this application, and based on the findings set forth above, the Planning Commission hereby finds that the requirements necessary for the approval of a conditional use permit are present, and as such, approves Conditional Use Permit 11-05 to allow the for the construction of an approximately 4,000 square foot permanent event tent facility and establish the associated uses in the Specific Plan Land Use Designation and the Upland Hills Country Club Specific Plan Zone, subject

to all applicable provisions of the Upland Municipal Code, the Upland Hills Country Club Specific Plan, and the following conditions of approval:

1.0 Development Services - General

- 1.1 The event tent and banquet facility shall operate in accordance with approved plans and specifications on file with the City of Upland Development Services Department and shall be in compliance with all conditions of approval of Conditional Use Permit No. CUP-11-05 as adopted by the Planning Commission on May 16, 2012 (plans stamped "Received April 9, 2012"). In the event conditions of approval by the Administrative Committee, Planning Commission, or City Council (as the case may be) require the revision of plans as submitted, the applicant shall submit four (4) copies of the approved plan (revised to incorporate conditions of approval) to the Development Services Department for record purposes prior to plan check submittal.
- 1.2 The owner/applicant shall submit to the Development Services Department written evidence of agreement with all conditions of this approval before the approval becomes effective.
- 1.3 Current and future property owners and operators shall be responsible for ensuring and complying with all conditions of approval contained herein.
- 1.4 The owner/applicant shall agree, at their sole cost and expense, to defend, indemnify, and hold harmless, the City, its officers, employees, agents, and consultants, from any claim, action, or proceeding brought by a third-party against the City, its officers, agents, and employees, which seeks to attack, set aside, challenge, void, or annul an approval of the City Council, Planning Commission, or other decision-making body, including staff, concerning this project. In addition, the applicant and property owner shall agree to reimburse the City for all costs incurred to enforce the City's Municipal Code and the conditions of approval imposed by this Conditional Use Permit, including any attorney and court costs.
- 1.5 Prior to submittal of plan check plans, the applicant shall submit four (4) copies of the approved plan (revised to incorporate conditions of approval) to the Development Services Department for record purposes in the event conditions of approval by the Administrative Committee, Planning Commission, or City Council (as the case may be) require the revision of the site plan and/or floor plan dated April 9, 2011. The applicant shall ensure that the plans are complete and accurate prior to submittal and shall make any and all revisions necessary to accurately depict the proposed building and use.
- 1.6 Prior to issuance of building permits, construction plans shall be subject to plan check with the Planning Division, Building Division, Engineering Division, Public Works Department, and Fire Department. The plans

submitted for plan check shall address all conditions of approval for the project and all applicable codes and regulations in effect at the time of submittal. Once approved during plan check by the Planning, Building, and Engineering Divisions, Fire Department, Public Works Department, and Police Department (as necessary), the revised site plan, floor plan, and any related constructions plans shall become the "approved plans" referred to hereinafter. The applicant shall provide one full size set of these approved plans and a digital copy (i.e., jpg or pdf) for retention by the Planning Division. The following item, including items noted in other sections of this resolution, shall be incorporated into the construction plans:

(A) All American with Disabilities Act and California Building Code accessibility standards shall be met on the plans and subject to field inspection relative to cross slopes, ramp slopes, hand rails, access to sanitary fixtures, path of travel to and through the tenet, landings at doors, type of door hardware, door opening effort and accessibility of restrooms.

- 1.7 The applicant shall arrange for a final inspection by representatives of the Planning Division, Building Division, Public Works Department, and Fire Department prior to the start of operations (i.e., service). Any discrepancy between the approved plans and the field conditions shall be remedied prior to the start of operations (i.e., service) such that the field condition is consistent with the approved plans. If the field condition cannot be reconfigured to match the approved plans, the Development Services Director shall consider any requested deviation and may refer the matter to the Planning Commission for review and consideration.
- 1.8 Prior to the start of operations (i.e., service), there shall be implementation of the applicable conditions of approval as required by the City of Upland, to the satisfaction of the Development Services Director, Public Works Director, Fire Chief, and Police Chief. No final inspection or clearances shall be given until all conditions are met. Each condition of approval is separately enforced, and if one of the conditions of approval is found to be invalid by a court of law, all the other conditions shall remain valid and enforceable.
- 1.9 The applicant shall pay all applicable cost recovery fees to the Development Services Department and City of Upland development fees prior to issuance of any permits.
- 1.10 All owners of any new businesses shall obtain a valid business license by the City of Upland Business License Division prior to the start of operations.
- 1.11 Prior to the start of operations (i.e., opening), any and all alarms installed on the premises shall require an alarm permit from the Finance Division.
- 1.12 Prior to installation of any new signs including addresses, the applicant shall obtain sign permits. No new signs or modifications to existing signs were

reviewed in conjunction with this approval and shall be under separate review. Changeable copy signs shall not be permitted.

- 1.13 Prior to the start of operations (i.e., opening), the applicant shall submit a revised floor plan, obtain any necessary permits, and pass a final inspection demonstrating compliance with all federal, State, and local requirements, including, but not limited to, all applicable building and fire code requirements.

2.0 Use Restrictions

- 2.1 The proposed project shall consist of constructing a new 4,039 square feet event tent facility and operating an event facility. Any modifications to the building, operations, operating hours, layout, or occupancy, shall be reviewed by the Development Services Director, and the Development Services Director shall have discretion to approve the deviation, or send the request to the Administrative Committee and/or Planning Commission as needed.
- 2.2 The footprint of the event tent shall not exceed 82 feet in length by 50 feet in width. The event tent structure shall be installed on a 4-inch-thick concrete floor slab, and shall not exceed 19 feet in height.
- 2.3 The tent material shall be maintained in good condition at all times. The northern, southern, and western sides of the event tent shall be constructed of a tent-gable end-panel fabric (Ferrari Architecture – Preconstraint 502 material – Champagne colored #502-8341). The eastern side of the structure shall consist of the same fabric and glazed windows with aluminum framing. Any necessary repairs of tears, holes, broken glass, discoloration, or other damage or deterioration shall be completed in a timely manner.
- 2.4 The floor plan of the tent shall consist of a music station, dance floor, banquet and serving tables, and 23 dining tables. Per the 2010 California Building Code, the maximum occupancy at any one time shall be 269 persons, including both patrons and staff. Changes to floor plan that may affect the maximum occupancy, exiting, and/or the maximum number of seats require a conditional use permit modification at the discretion of the Development Services Director.
- 2.5 Hours of operation shall be as follows: Sunday through Thursday 2:00 p.m. to 10:00 p.m. and Fridays through Saturdays 2:00 p.m. to 11:00 p.m. Changes to the hours of operation shall require a conditional use permit modification at the discretion of the Development Services Director.
- 2.6 One (1) event per day may be held in the event tent. Additionally, the existing banquet facility and country club shall not exceed two (2) events per day. Therefore, there shall not be more than three (3) daily events at the Upland Hills Country Club facilities.

- 2.7 The event tent and banquet facility shall only be available for use by private events. A "private banquet event" shall mean a private party that is not open to or arranged for the general public to attend, nor arranged by a vendor for the general public, with food service as a primary use and alcohol service, dancing, and/or live entertainment being ancillary and subordinate uses. Promoters shall not be used to promote any event, including events which offer live entertainment and dancing. Banquet contracts for private banquet events must be available on-site for presentation to Police, Fire, or other City of Upland personnel upon request.
- 2.8 Noise emanating from the building shall not be audible beyond the area under the control of the business owner or property owner, shall be within the limitations prescribed by the City's Noise Ordinance, and shall not create a nuisance to surrounding properties.
- 2.9 It shall be the responsibility of the operator/manager to ensure that sufficient noise attenuation boards are in place for each event. The operator/manager shall monitor and reduce any noise levels during each event to ensure they do not exceed 83dB(A) at the source or the level necessary to achieve compliance with the noise ordinance at the nearest property line, and shall ensure that all music is discontinued promptly at 10:00 p.m. Sunday through Thursday and 11:00 p.m. Friday and Saturday.
- 2.10 There shall be an on-site operator or manager at all times during events.
- 2.11 It shall be the responsibility of the project applicant to set up a telephone number to contact an on-site operator/manager for the event if any noise complaint is filed. When complaints are received or the Police Department responds to the event due to noise complaints, it shall be the responsibility of the operator/manager to stop any entertainment and/or ensure that a representative of the operator/manager with the authority to stop the music and/or event is on site at all times during events.
- 2.12 If the Police Department, or any other City Department, receives complaints or responds to complaints regarding excessive noise associated with events in the event tent structure, the operator/manager shall be required to submit a noise study conducted during an event that evaluates compliance with the noise ordinance in the Upland Municipal Code. The study shall be prepared by a noise consultant that is experienced in noise studies. If noise associated with the events is found to exceed noise standards, the owner/operator shall modify the use in such a manner as to comply with the noise ordinance and minimize disturbances as much as possible (i.e. modifying hours of operation, eliminating amplified sound and/or non-amplified live entertainment, employing other noise reduction techniques).
- 2.13 Live entertainment shall be limited to disc jockeys (DJ's) and small, non-amplified bands.

- 2.14 There shall not be any use of amplification of live entertainment other than Disk Jockeys. Amplified Disk Jockeys shall keep their volume below the maximum of 83dB(A).
- 2.15 All entertainment and events shall only occur within the event structure. No outdoor activities may occur other than ingress and egress of guests and staff.
- 2.16 The operator shall take measures to minimize concentrations of persons in the exterior of the banquet facilities. In the event that the Police Chief has cause to believe that concentrations of people in the exterior of the banquet facilities are disruptive or cause an excessive demand for public services, the operator shall modify business operations to address the concern.
- 2.17 Alcohol may not be served outside of the event tent structure.
- 2.18 Live entertainment and dancing shall only occur inside the building in the 12 foot by 20 foot location designated on the approved floor plan, out of the way of exits and paths of travel.
- 2.19 The applicant shall ensure that the project does not cause substantial light or glare which would adversely affect nighttime views in the area. The applicant shall demonstrate on the plans and ensure that security lighting around the tent is shielded such that the light does not extend beyond the property lines.
- 2.20 The applicant shall maintain the property free of outdoor storage, display, or staging. The applicant shall be responsible for maintaining the premises in a clean and orderly condition, without outdoor storage of clutter of any type and free of graffiti and litter.
- 2.21 No fog machines, fireworks, open flames, or other devices shall be used on the premises.
- 2.22 Promoters shall not be used to promote any live entertainment, dancing, or Special Event.
- 2.23 There shall be compliance with all applicable State laws, including but not limited to, California Labor Code 6404.5, pertaining to smoking.
- 2.24 The business owner and manager shall be responsible for ensuring that parking occurs only in designated on-site parking stalls. If parking issues or complaints arise due to the proposed use and the Development Services Director and/or Police Chief determine that the parking issues associated with the proposed use are found to be disruptive to surrounding tenants and/or properties, the manager/operator shall be required to address the issues through mitigation measures to eliminate issues and complaints including, but not limited to, modifying the peak hours of operation, reducing

the maximum number of persons permitted in the buildings, and/or employing additional security personnel. Any mitigation measures may require a modification to the Conditional Use Permit, at the discretion of the Development Services Director. Any disagreement between the applicant and staff on mitigation measures shall be presented to the Planning Commission for direction.

3.0 Police Department

- 3.1 If, at the discretion of the Police Chief or Fire Chief, security is determined to be ineffective at any time, changes to the security plan or business' operational characteristics may be required, which may include, but is not limited to, reduction of hours, employment of additional security personnel, etc. These modifications may require a conditional use permit modification at the discretion of the Development Services Director.
- 3.2 The business owner shall undertake steps to prevent disturbances inside the establishment to the satisfaction of the Police Chief, as follows:
- (A) Staff and servers shall ensure that alcoholic beverages are not being consumed by minors and that there are no disturbances or other unlawful violations occurring within the business premises.
 - (B) A strict identification policy shall be implemented to prevent consumption of alcoholic beverages by minors.
 - (C) Staff and servers shall ensure that there are no sales or service of alcoholic beverages to obviously intoxicated persons. All such persons shall be requested to leave. All such persons who appear to pose a safety concern by being intoxicated and who have no suitable escort, or who is unable to care for himself/herself, or in any other appropriate situation, shall be offered transportation through a taxi service at the individual's expense. If said individual refuses such assistance, the business owner's security staff shall notify the Upland Police Department.
 - (D) The business owner's management shall support any server's decision to stop service to any guest that appears obviously intoxicated.
 - (E) Employees and contracted employees shall not consume alcoholic beverages on the premise.
 - (F) The business owner shall post on the premises of the business a list of taxi service phone numbers at visible locations.
 - (G) The business owner shall post "No Loitering" signs in the parking lot.

If these measures are deemed to be insufficient by the Police Chief, the applicant shall implement more effective security personnel procedures, at the discretion of the Police Chief.

- 3.3 The owner/operator shall employ professional security personnel for the duration of any banquet event which offers an alcohol beverage service, live entertainment and/or dancing, and exceeds 100 persons regardless of the time or day of the week. The security personnel shall prevent any disturbances inside and outside the banquet facilities, keep guests within the boundaries of the banquet facilities, and prevent guests from loitering, littering, or engaging in disturbances. All security and management personnel shall be in uniform and shall have electronic communication abilities with each other and with the Police Department at all times. If the number of security personnel is deemed to be insufficient by the Police Chief, the applicant shall hire additional personnel or implement more effective security personnel procedures, at the discretion of the Police Chief.
- 3.4 The business owner shall enroll all employees serving alcoholic beverages to patrons in a certified training program approved by the State Department of Alcoholic Beverage Control (ABC) for the responsible sales of alcohol. The training shall be offered to new employees on no less than a quarterly basis.
- 3.5 The manager on duty shall be at least 21 years of age.
- 3.6 Performers, guests, employees, and/or contracted employees shall not perform or engage in any behavior in any way that would violate existing laws or ordinances pertaining to indecent exposure, and/or that would constitute an adult business as defined in the Upland Municipal Code Chapter 17.122.
- 3.7 The business owner shall install signs at the inside of all exits advising customers that alcoholic beverages may not be removed from the premises.
- 3.8 Adequate lighting shall be provided on the exterior of the building, including within all parking lot and walkway areas, to the satisfaction of the Police Chief and Development Services Director. Lighting shall create a minimum of three (3) foot candles in all areas of the site and light fixtures shall be shielded to direct light downward to avoid creating light and glare on adjacent properties. A photometric plan shall be submitted with the plan check plans, and shall be approved by the Police and Development Services Departments prior to permit issuance for tenant improvements. Lighting shall be functioning at all times and shall be subject to field inspection by the Police Department prior to occupancy.
- 3.9 No loitering shall be permitted on-site. Adequate staffing, management, and supervisory techniques shall be provided to prevent loitering, unruliness, and boisterous activities of guests outside the business or on public property.

- 3.10 The premises and the area adjacent to the premises shall be maintained free of graffiti and shall be removed within 48 hours of its appearance or upon notification to the Applicant.
- 3.11 If, at the discretion of the Police Chief or Fire Chief, security is determined to be ineffective at any time, a security plan shall be required. Operational changes may be required including, but not limited to, or elimination of hours of live entertainment employment of additional security personnel, etc. These modifications may require a conditional use permit modification at the discretion of the Development Services Director.

4.0 Fire Department

- 4.1 Complete architectural and structural building plans, including all specifications, shall be submitted to the Fire Department for review prior to the issuance of any building permits. These plans and specifications shall include, but are not limited to, construction type, exits, fire protection equipment, building protection, and interior finish. The developer is responsible for, and shall apply for and receive, all fire department permits, paying all necessary fees prior to beginning construction.
- 4.2 The applicant shall coordinate with the Fire Department on construction of the facility and submit a construction schedule and plan prior to permit issuance.
- 4.3 Contractor's license number, including expiration date, wet stamp, and signature of the contractor licensee shall be on each plan
- 4.4 Provide an accurate description of the scope of work for the project on the plans.
- 4.5 This project is required to comply with the 2010 California Fire Code as amended in the Upland Municipal Code, and Upland Fire Department development standards.
- 4.6 In accordance with Section 3103.1 of the California Building Code, the applicant shall install fire sprinklers in the event tent. The applicant shall be allowed a 90 day period from the issuance of construction permits in which to obtain a fire sprinkler permit, complete installation of fire sprinklers, and perform testing and pass final inspection. During this 90 day period, temporary occupancy shall be granted under the condition that contracted Fire Watch be present on the premises at the cost of the applicant. If the fire sprinklers are not installed within 90 days of construction permits, the tent shall be removed and no permanent occupancy will be granted. Prior to contracting with a Fire Watch or changing Fire Watch personnel, the applicant shall submit information regarding the qualifications of the selected Fire Watch personnel to the Fire Chief. If the Fire Chief determines that the selected personnel do not have adequate training or experience, the

applicant shall select alternative personnel to the satisfaction of the Fire Chief. The Fire Watch shall be responsible for ensuring that the maximum building occupancy is not exceeded and that the applicant is providing safe conditions for patrons at all times.

- 4.7 In the event that the maximum occupancy within an banquet room is exceeded, or where any fire detection, suppression or alarm system component has been interrupted or is not operational, the Fire Chief shall have the discretion to require that the applicant obtain and pay for the services of a Fire Watch within twenty-four hours of being notified by the Fire Chief that a Fire Watch is being required. Prior to contracting with a Fire Watch or changing Fire Watch personnel, the applicant shall submit information regarding the qualifications of the selected Fire Watch personnel to the Fire Chief. If the Fire Chief determines that the selected personnel do not have adequate training or experience, the applicant shall select alternative personnel to the satisfaction of the Fire Chief. The Fire Watch shall be responsible for ensuring that the maximum building occupancy is not exceeded and that the applicant is providing safe conditions for guests.
- 4.8 If the event tent facility exceeds twenty (20) fire sprinkler heads, the applicant shall install a fire alarm system and obtain the necessary fire alarm permits from the Finance Department.

5.0 Public Works/Engineering

- 5.1 Prior to the issuance of any construction or grading permits, the applicant shall submit grading plans and utility plans for plan check to the Development Services Department as a complete package. The plan submittal shall include the following.
- (A) A complete package including grading, composite utility, and any appropriate reports and back up documents. Incomplete submittals shall be rejected.
 - (B) Plans prepared on 24" x 36", 4 mil mylars on City Standard title block. This includes water, grading, and erosion control. No "cut and paste," "sticky-backs," "zip-a-tone," "Kroy lettering," or other tape shall be permitted on final originals.
 - (C) A map/plan that demonstrates the location of all drainage. All drainage shall be directed on-site to points so indicated upon the subject map/plan. Any deviation will require re-submittal to the Administrative Committee for approval. Location, direction, and devices for conveying site drainage shall be subject to review and approval by the Public Works Director.
 - (D) Composite Utility Plans submitted in conjunction with the grading plan. Any easements shall be dedicated to the appropriate Utility Company

as required to accommodate the location of that facility. The subject project shall be served by underground utilities. All utility plans (Edison, Telephone, and Cable TV) shall be submitted to the Public Works Department for review and approval prior to the issuance of any permits.

- (E) A grading plan shall be approved per all applicable Engineering Directives and the CU-E Series Standard Drawings; said plan shall be reviewed and approved prior to a grading permit.
- 5.2 Owner/Developer shall be required to arrange for a PRE-CONSTRUCTION MEETING with the Public Works Department after the issuance of any permits but before commencing work.
- 5.3 Prior to issuance of a grading permit, the applicant shall conduct a pre-construction survey to identify potential bird nests as required by the Migratory Bird Treaty Act. If any potential impacts are found, the applicant shall notify the Development Services Department.
- 5.4 The Owner/Developer shall employ a qualified PROFESSIONAL ENGINEERING FIRM to perform design and inspection services as outlined in Engineering Directive General Series before issuance of any permits (ED-G-2).
- 5.5 As-built plans (grading plans including all utilities) shall be submitted prior to occupancy release. Electronic drawing files on compact disc (CD's) shall be submitted to the City for file in the format acceptable by the City prior to occupancy release.
- 5.6 All Ordinances, Policy Resolutions, and Standards of the City in effect at the time this project is approved shall be complied with as a condition of this approval.
- 5.7 No Certificate of Occupancy, or any other final clearance needed prior to occupancy, shall be given until all other conditions are met.
- 5.8 Prior to occupancy, asphalt paving, landscape, irrigation, etc. that is damaged during the construction shall be repaired or replaced to the City's satisfaction.
- 5.9 All utility companies (for non-City owned utilities) shall be contacted to establish appropriate easements to provide services to each parcel.
- 5.10 The Owner/Developer is responsible for research on private utility lines (Gas, Edison, Telephone, Cable, Irrigation, etc.) to ensure there are no conflicts with the site.
- 5.11 All existing on-site utility lines that conflict with this project shall be relocated, removed, or sealed to the satisfaction of the Public Works Director.

- 5.12 Prior to building permit issuance, the owner shall obtain a letter from Southern California Edison that the existing electrical transformer is adequate for the proposed use. Any new transformer shall be subject to approval of the Public Works and Development Services Director.
- 5.13 Dust control operations shall be performed by the Contractor at the time, location and in the amount required as often as necessary to prevent the excavation or fill work, demolition operation or other activities from producing dust in amounts harmful to people or causing a nuisance to persons living nearby or occupying buildings in the vicinity of work. The Contractor is responsible for compliance with Fugitive Dust Regulations issued by the Southern California Air Quality Management District (SCAQMD).
- 5.14 The Developer shall apply water as often as necessary to all active construction areas to control dust emissions. Control of dust shall be by sprinkling of water, use of approved dust preventatives, modifications of operations or any other means acceptable to the Engineer, City of Upland, the Regional Water Quality Control Board RWQCB, the South Coast Air Quality Management District (SCAQMD), and any Health or Environmental Control Agency having jurisdiction over the facility. The Engineer shall have the authority to suspend all construction operations if, in their opinion, the Contractor fails to adequately provide for dust control.
- 5.15 If the amount of impervious surfaces exceeds 5,000 square feet as shown in the grading plan, the applicant shall submit a Water Quality Management Plan (WQMP) (reference City Of Upland "Construction Stormwater Guidelines" and the County of San Bernardino "Guidelines for New Development and Redevelopment") for review and approval by the City Of Upland, Public Works Department, Environmental Division. The WQMP shall include a description and map of the project along with an outline of structural and non-structural Best Management Practices (BMPs), which apply to the project pursuant to the "New Development and Redevelopment Guidelines." If required, the subject WQMP shall be approved prior to the issuance of grading or building permit. Please contact Mr. Saul Martinez at (909) 921-9241 for any questions and or details.
- 5.16 A Waste Management Plan (WMP) along with required Forms "A" and "B" are necessary to demonstrate compliance with the Municipal Code 13.28.620 that requires projects to salvage, reuse, or recycle at least 50% of construction and demolition debris generated by the project. This code was adopted to assist the City of Upland in meeting the State mandated diversion requirement of 50% of all waste generated. In developing a WMP, the owner/developer shall specifically identify:
- (A) All waste materials that will be generated and complete "Form A". "Form A" is to accompany the Building Permit Application, and shall be

submitted one week prior to permit issuance. "Form A" shall be approved prior to permit issuance.

- (B) The procedure for management, control and disposition of all refuse and waste materials generated. "Form B" shall be submitted with receipts is to accompany the Certificate of Occupancy request. "Form B" shall be approved prior to occupancy.

The Owner/Developer shall submit a WMP along with the required forms to Integrated Waste Management for review and approval. Contact the Engineering Division at (909) 931-4317 for details.

- 5.17 All owner/developer's contractors/subcontractors will be required to identify, maintain proper control and provide documentation for the deposition of waste materials described in the Waste Management Plan.
- 5.18 All refuse and solid wastes generated by commercial construction and operation activities shall be stored in approved containers at all times and shall be placed in a manner so that visual, noise or other impacts and environmental public health nuisances are minimized.

6.0 Review/Compliance

- 6.1 The Planning Commission shall review the use 90 days, 180 days, and on an annual basis following the date of final inspection, or as needed at the discretion of the Development Services Director, to determine whether the applicant and operators are operating the use in a manner that is compatible with the community. The Planning Commission may establish additional conditions of approval that are necessary to eliminate any issues that arise from the operation of the use that adversely impact the public health, welfare, and safety, or may direct staff to initiate revocation proceedings. The conditional use permit may be revoked if the permittee, his agents or assigns, or employee(s) of the establishment, or any other person connected or associated with the permittee or his business establishment, or any person who is exercising managerial authority of the business establishment has:
- A. Violated any rule, regulation, or condition of approval adopted by the Planning Commission relating to the conditional use permit or contained in the Upland Municipal Code, or state or federal regulations. Violation of any provision of the Upland Municipal Code (UMC) or the conditions of approval set forth in this resolution, shall be deemed to constitute an infraction of the Upland Municipal Code, and shall be subject to the applicable fines and penalties, including the possibility of revocation of this permit.
- B. Conducted the operation permitted hereunder in a manner contrary to the peace, health, safety, and general welfare of the public, or in a manner which either generates or contributes to noise and/or

health/sanitation nuisances, or which results in undesirable activities that negatively affects adjacent properties or creates an increased demand for public services.

SECTION 4. APPEAL. Pursuant to Upland Municipal Code Section 17.16.070, the decision of the Planning Commission may be appealed to the City Council provided that written notice of the appeal is filed with the City Clerk within fifteen (15) days after the date of the Planning Commission’s adoption of this Resolution. Failure to file a timely appeal shall constitute a waiver of the right of appeal, and the decision of the Planning Commission shall be final.

SECTION 5. CERTIFICATION. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this Resolution, and shall cause this Resolution and his certification to be entered in the Book of Resolutions of the Planning Commission of the City.

I HEREBY CERTIFY that the foregoing Resolution was duly and regularly passed and adopted by the Planning Commission of the City of Upland at a regular adjourned meeting thereof held on the 16th day of May, 2012, by the following roll call vote:

AYES: Commissioners King, Moga, Morris, Timm, Velto, Verrinder

NAYS: None

ABSENT: Commissioner Schwary



George Morris, VICE CHAIR

ATTEST:



Jeff Zwack, SECRETARY

Exhibit B
Resolution No. 4791



FILE COPY**RESOLUTION NO. 4791**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF UPLAND MODIFYING THE APPROVAL OF CONDITIONAL USE PERMIT 11-05 FOR THE ESTABLISHMENT AND OPERATION OF AN APPROXIMATELY 4,000 SQUARE FOOT PERMANENT EVENT TENT FACILITY ON REAL PROPERTY LOCATED AT 1231 E. 16TH STREET AT THE UPLAND HILLS COUNTRY CLUB IN THE CITY OF UPLAND, CALIFORNIA.

THE PLANNING COMMISSION OF THE CITY OF UPLAND DOES HEREBY FIND, ORDER, AND RESOLVE AS FOLLOWS:

SECTION 1. RECITALS.

- A. On May 16, 2012, the Planning Commission held a public hearing and adopted Resolution No. 4767 approving Conditional Use Permit 11-05 for the establishment of an event tent at the Upland Hills Country Club located at 1231 E. 16th Street.
- B. Following the Planning Commission's adoption of Resolution No. 4767 approving Conditional Use Permit 11-05, the applicant proceeded with construction, installation, and operation of the event tent.
- C. Due to complaints from members of the public about the operation of the tent offered during oral communications at the November 17, 2012, Planning Commission meeting, the Planning Commission directed staff to schedule a public hearing to consider whether the applicant is in compliance with Conditional Use Permit No. 11-05 or whether additional conditions of approval should be imposed to eliminate any issues associated with the use of the tent or whether revocation of the permit should be initiated.
- D. On January 23, 2013, March 27, 2012, and May 22, 2013, the Planning Commission held and continued public hearings to consider whether the applicant is in compliance with CUP 11-05.
- E. On May 22, 2013, the Planning Commission held a public hearing and adopted Resolution No. 4780 modifying Conditional Use Permit 11-05 to address compliance issues with regards to noise, lighting, security, and site maintenance as documented in complaint logs, pictures, calls for service, and video evidence, as summarized within the Compliance Matrix included as Attachment D in the May 22, 2013, Planning Commission staff report. Specifically, the Planning Commission found it is necessary to modify conditions of approval contained within Resolution No. 4767 related to noise, security, lighting, and site maintenance to clarify the operational requirements for the event tent to further ensure that the event tent is

compatible with the neighborhood and does not adversely affect the public health, safety, and welfare.

- F. Due to complaints from members of the public about the operation of the tent offered during oral communications at the October 2013 and November 2013 Planning Commission meetings, the Planning Commission directed staff to schedule a public hearing to consider whether the applicant is in compliance with Conditional Use Permit No. 11-05 or whether additional conditions of approval should be imposed to eliminate any issues associated with the use of the tent or whether revocation of the permit should be initiated.
- G. On February 26, 2014, the Planning Commission continued a public hearing with no testimony to March 26, 2014, after providing notice to the public in the manner and for the time required by law, to consider whether the applicant is in compliance with Conditional Use Permit No. 11-05, or whether conditions of approval should be clarified or imposed to eliminate any issues associated with the use of the tent or whether revocation of the permit should be initiated.
- H. On March 26, 2014, the Planning Commission held a public hearing and heard and considered both oral and written evidence to consider whether the applicant is in compliance with Conditional Use Permit No. 11-05, or whether conditions of approval should be clarified or imposed to eliminate any issues associated with the use of the tent or whether revocation of the permit should be initiated.

SECTION 2. FINDINGS.

- A. That recitals A through G of Section 1 are true and correct.

That complaints and compliance issues with regards to use of the tent have continued since CUP 11-05 was modified by the Planning Commission on May 22, 2013. Complaints and compliance issues have been documented in complaint logs, pictures, calls for service, and video evidence, as summarized within the Compliance Matrix attached hereto as Exhibit A and incorporated herein by this reference. In summary, the matrix shows clear violations regarding hours of operation, lighting, use of the gazebo, and use of open flames; and, continuing issues that require additional effort by the applicant regarding loitering, concentrations of people, effective security and management, parking, and the consumption of alcohol outside of the tent. In addition, based on discussions with the applicant, there are some conditions that would benefit from additional clarification relating to hours of operation, lighting, noise, security and loitering as described in Section 2.B herein.

- B. That to further ensure that the event tent is compatible with the neighborhood and does not adversely affect the public health, safety, and welfare, and to further clarify the meaning and intent of certain conditions of

approval, the Planning Commission finds it is necessary to modify conditions of approval contained within Resolution No. 4780 related to hours of operation, noise, concentrations of people outside the tent, loitering, and lighting, as follows:

1. Hours of Operation (Condition 2.5)

Complaints, video evidence, and police reports indicate that the applicant is in violation of the hours of operation. The applicant has indicated that they feel the condition is unclear. In order to further clarify the condition and define what constitutes hours of operation, Condition 2.5 has been modified as shown in the resolution herein.

2. Lighting (Condition 2.19)

Reports and video evidence demonstrate compliance issues arising from the "dance lighting" which were reported to cause excess light and glare into surrounding homes. Although the applicant installed shades in June 2013, they do not sufficiently block the lighting and lighting effects that are utilized inside the tent. It is necessary to clarify Condition 2.19 to clarify that all dance lights, rotating lights, or similar lights need to be screened with "black out" type screening by a date certain so that they are not visible anywhere outside of the tent.

3. Noise (Conditions 2.8 and 2.9)

Complaints, video evidence, and staff site visits demonstrate that noise is audible from the nearest property line. In addition, an assessment of noise impact conducted by an independent sound engineer found that the type of noise and a variation in noise associated with amplified music and voice in the tent can be annoying. Given that the applicant has stated that the condition is unclear, a clarification to Condition 2.8 is included within the conditions herein to further align the condition with standards within the Upland Municipal Code. Additionally, Condition 2.9 has been modified to maintain consistency with Condition 2.8 and to require the use of an audio limiter to reduce the spikes in decibel levels associated with amplified speech over music levels.

4. Concentrations of People Outside the Tent (Condition 2.16) and Loitering (Condition 3.9)

Given that resident complaints, and video evidence shows that guests congregating in the parking lot, guests improperly using golf facilities, and noise from boisterous guests congregating outside, are continuing, a clarification to Condition 2.16 is necessary to require security for events within the tent at a level approved by the Police Chief and

Development Services Director, and in compliance with any policies issued by the Police Chief and Development Services Director.

Given that the applicant has stated that the term "loitering" is unclear, a clarification to Condition 3.9 is necessary to provide a more defined meaning of loitering. The definition is included within Condition 3.9 herein.

SECTION 3. DETERMINATION. In light of the evidence presented at the public hearing on the compliance review for Conditional Use Permit 11-05, and based on the recitals and findings set forth above and in accordance with Condition 6.1 of Resolution 4780, the Planning Commission hereby finds that it is necessary to modify its prior approval and subsequent modification of Conditional Use Permit 11-05 by modifying Resolution No. 4780 through the adoption of Resolution No. 4791, which sets forth modified conditions of approval for the establishment and operation of an approximately 4,000 square foot permanent event tent facility at 1231 E. 16th Street within the Upland Hills Country Club, as set forth below:

1.0 Development Services - General

- 1.1 The event tent and banquet facility shall operate in accordance with approved plans and specifications on file with the City of Upland Development Services Department and shall be in compliance with all conditions of approval of Conditional Use Permit No. CUP-11-05 as approved by the adoption of Resolution No. 4767 by Planning Commission on May 16, 2012 (plans stamped "Received April 9, 2012"), and as modified by the adoption of Resolution No. 4780 by the Planning Commission on May 22, 2013, and as modified by the adoption of Resolution No. 4791 by the Planning Commission on March 26, 2014. The conditions of approval in Resolution No. 4791 shall replace the conditions of approval in Resolution Nos. 4767 and 4780. In the event conditions of approval by the Administrative Committee, Planning Commission, or City Council (as the case may be) require the revision of plans as submitted, the applicant shall submit four (4) copies of the approved plan (revised to incorporate conditions of approval) to the Development Services Department for record purposes prior to plan check submittal.
- 1.2 The owner/applicant shall submit to the Development Services Department written evidence of agreement with all conditions of this approval before the approval becomes effective.
- 1.3 Current and future property owners and operators shall be responsible for ensuring and complying with all conditions of approval contained herein.
- 1.4 The owner/applicant shall agree, at their sole cost and expense, to defend, indemnify, and hold harmless, the City, its officers, employees, agents, and consultants, from any claim, action, or proceeding brought by a third-party against the City, its officers, agents, and employees, which seeks to attack,

set aside, challenge, void, or annul an approval of the City Council, Planning Commission, or other decision-making body, including staff, concerning this project. In addition, the applicant and property owner shall agree to reimburse the City for all costs incurred to enforce the City's Municipal Code and the conditions of approval imposed by this Conditional Use Permit, including any attorney and court costs.

- 1.5 Prior to submittal of plan check plans, the applicant shall submit four (4) copies of the approved plan (revised to incorporate conditions of approval) to the Development Services Department for record purposes in the event conditions of approval by the Administrative Committee, Planning Commission, or City Council (as the case may be) require the revision of the site plan and/or floor plan dated April 9, 2011. The applicant shall ensure that the plans are complete and accurate prior to submittal and shall make any and all revisions necessary to accurately depict the proposed building and use.
- 1.6 Prior to issuance of building permits, construction plans shall be subject to plan check with the Planning Division, Building Division, Engineering Division, Public Works Department, and Fire Department. The plans submitted for plan check shall address all conditions of approval for the project and all applicable codes and regulations in effect at the time of submittal. Once approved during plan check by the Planning, Building, and Engineering Divisions, Fire Department, Public Works Department, and Police Department (as necessary), the revised site plan, floor plan, and any related constructions plans shall become the "approved plans" referred to hereinafter. The applicant shall provide one full size set of these approved plans and a digital copy (i.e., jpg or pdf) for retention by the Planning Division. The following item, including items noted in other sections of this resolution, shall be incorporated into the construction plans:
 - (A) All American with Disabilities Act and California Building Code accessibility standards shall be met on the plans and subject to field inspection relative to cross slopes, ramp slopes, hand rails, access to sanitary fixtures, path of travel to and through the tenet, landings at doors, type of door hardware, door opening effort and accessibility of restrooms.
- 1.7 The applicant shall arrange for a final inspection by representatives of the Planning Division, Building Division, Public Works Department, and Fire Department prior to the start of operations (i.e., service). Any discrepancy between the approved plans and the field conditions shall be remedied prior to the start of operations (i.e., service) such that the field condition is consistent with the approved plans. If the field condition cannot be reconfigured to match the approved plans, the Development Services Director shall consider any requested deviation and may refer the matter to the Planning Commission for review and consideration.

- 1.8 Prior to the start of operations (i.e., service), there shall be implementation of the applicable conditions of approval as required by the City of Upland, to the satisfaction of the Development Services Director, Public Works Director, Fire Chief, and Police Chief. No final inspection or clearances shall be given until all conditions are met. Each condition of approval is separately enforced, and if one of the conditions of approval is found to be invalid by a court of law, all the other conditions shall remain valid and enforceable.
 - 1.9 The applicant shall pay all applicable cost recovery fees to the Development Services Department and City of Upland development fees prior to issuance of any permits.
 - 1.10 All owners of any new businesses shall obtain a valid business license by the City of Upland Business License Division prior to the start of operations.
 - 1.11 Prior to the start of operations (i.e., opening), any and all alarms installed on the premises shall require an alarm permit from the Finance Division.
 - 1.12 Prior to installation of any new signs including addresses, the applicant shall obtain sign permits. No new signs or modifications to existing signs were reviewed in conjunction with this approval and shall be under separate review. Changeable copy signs shall not be permitted.
 - 1.13 Prior to the start of operations (i.e., opening), the applicant shall submit a revised floor plan, obtain any necessary permits, and pass a final inspection demonstrating compliance with all federal, State, and local requirements, including, but not limited to, all applicable building and fire code requirements.
- 2.0 Use Restrictions
- 2.1 The proposed project shall consist of constructing a new 4,039 square feet event tent facility and operating an event facility. Any modifications to the building, operations, operating hours, layout, or occupancy, shall be reviewed by the Development Services Director, and the Development Services Director shall have discretion to approve the deviation, or send the request to the Administrative Committee and/or Planning Commission as needed.
 - 2.2 The footprint of the event tent shall not exceed 82 feet in length by 50 feet in width. The event tent structure shall be installed on a 4-inch-thick concrete floor slab, and shall not exceed 19 feet in height.
 - 2.3 The tent material shall be maintained in good condition at all times. The northern, southern, and western sides of the event tent shall be constructed of a tent-gable end-panel fabric (Ferrari Architecture – Preconstraint 502 material – Champagne colored #502-8341). The eastern side of the structure shall consist of the same fabric and glazed windows with aluminum framing.

Any necessary repairs of tears, holes, broken glass, discoloration, or other damage or deterioration shall be completed in a timely manner.

- 2.4 The floor plan of the tent shall consist of a music station, dance floor, banquet and serving tables, and 23 dining tables. Per the 2010 California Building Code, the maximum occupancy at any one time shall be 269 persons, including both patrons and staff. Changes to floor plan that may affect the maximum occupancy, exiting, and/or the maximum number of seats require a conditional use permit modification at the discretion of the Development Services Director.
- 2.5 Hours of operation shall be as follows: Seven (7) days a week from 11:00 a.m. to 10:00 p.m. All services (e.g., food and beverage services), ceremonial activities (e.g., bride and groom send-off, garter toss, bouquet toss, weddings in the gazebo, etc.), amplification (e.g., public address system, music, etc.), and other entertainment or organized activities shall commence no earlier than 11:00 a.m. and terminate no later than 10:00 p.m. Guests shall disperse from the event facility and parking lot by 11:00 p.m. Changes to the hours of operation shall require a conditional use permit modification at the discretion of the Development Services Director.
- 2.6 One (1) event per day may be held in the event tent. Additionally, the existing banquet facility and country club shall not exceed two (2) events per day. Therefore, there shall not be more than three (3) daily events at the Upland Hills Country Club facilities. The applicant shall ensure that in the event that two events occur at the same time in the tent and in the clubhouse, that the cumulative noise level does not exceed the City's Noise Ordinance.
- 2.7 The event tent and banquet facility shall only be available for use by private events. A "private banquet event" shall mean a private party that is not open to or arranged for the general public to attend, nor arranged by a vendor for the general public, with food service as a primary use and alcohol service, dancing, and/or live entertainment being ancillary and subordinate uses. Promoters shall not be used to promote any event, including events which offer live entertainment and dancing. Banquet contracts for private banquet events must be available on-site for presentation to Police, Fire, or other City of Upland personnel upon request.
- 2.8 Noise emanating from the building shall be within the limitations prescribed by the City's Noise Ordinance. It is a condition of this approval that the applicant abide by Upland Municipal Code Section 9.40.060.B., which states, "Notwithstanding any specified noise level, it is also unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary, or unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person residing in the area, and it is unlawful for any person in ownership or

control of any premises to knowingly permit a violation of this section upon the premises.”

- 2.9 It shall be the responsibility of the operator/manager to ensure that sufficient noise attenuation boards are in place for each event. The operator/manager shall monitor and reduce any noise levels during each event to ensure they do not exceed 83dB(A) at the source or the level necessary to achieve compliance with the noise ordinance at the nearest property line, and shall ensure that all music is discontinued promptly at 10:00 p.m. each day, as described within Condition 2.5. In addition, the operator shall install an audio limiter on the sound system to minimize variations in noise levels no later than April 21, 2014, and ensure that the audio limiter is utilized whenever amplification is used within the tent.
- 2.10 There shall be an on-site operator or manager at all times during events.
- 2.11 It shall be the responsibility of the project applicant to set up and circulate among the community a telephone number to contact an on-site operator/manager for the event if any complaint is filed. When complaints are received or the Police Department responds to the event due to noise complaints, it shall be the responsibility of the operator/manager to stop any entertainment and/or ensure that a representative of the operator/manager with the authority to stop the music and/or event, or address the specific concern that is raised, is on site at all times during events.
- 2.12 If the Police Department, or any other City Department, receives complaints or responds to complaints regarding excessive noise associated with events in the event tent structure, or the cumulative noise level associated with two events occurring at the same time in the tent and the clubhouse, the operator/manager shall be required to submit a noise study conducted during an event that evaluates compliance with the noise ordinance in the Upland Municipal Code. The study shall be prepared by a noise consultant that is experienced in noise studies. If noise associated with the events is found to exceed noise standards, the owner/operator shall modify the use in such a manner as to comply with the noise ordinance and minimize disturbances as much as possible (i.e. modifying hours of operation, eliminating amplified sound and/or non-amplified live entertainment, employing other noise reduction techniques).
- 2.13 Live entertainment shall be limited to disc jockeys (DJ's) and small, non-amplified bands.
- 2.14 There shall not be any use of amplification of live entertainment other than Disk Jockeys. Amplified Disk Jockeys shall keep their volume below the maximum of 83dB(A).
- 2.15 All entertainment and events shall only occur within the event structure with the exception of the use of a single, non-amplified live musical instrument

[e.g. guitar, harp, violin] or public address system for amplification of services or vows [no music] in conjunction with weddings, anniversaries, or memorial services (i.e. funerals) in the gazebo prior to 8:00 p.m. No other outdoor activities may occur in association with the event tent other than ingress and egress of guests and staff and use of the gazebo as described herein.

- 2.16 The operator shall take measures to minimize concentrations of persons in the exterior of the banquet facilities, in accordance with the approved Security Plan as required by Condition 3.1. In the event that the Police Chief has cause to believe that concentrations of people in the exterior of the banquet facilities are disruptive or cause an excessive demand for public services, the operator shall modify business operations to address the concern.
- 2.17 Alcohol may not be served outside of the event tent structure.
- 2.18 Live entertainment and dancing shall only occur inside the building in the 12 foot by 20 foot location designated on the approved floor plan, out of the way of exits and paths of travel.
- 2.19 The applicant shall ensure that the project does not cause substantial light or glare which would adversely affect nighttime views in the area. All dance lights, rotating lights, laser lights, and similar lighting effects shall be sufficiently screened such that they are not visible from the exterior of the tent in any direction. The operator shall install "black out" type window shades or screening (or equivalent measure) and pass an inspection by the Development Services Director no later than April 21, 2014.
- 2.20 The applicant shall maintain the property free of outdoor storage, display, or staging. The applicant shall be responsible for maintaining the premises in a clean and orderly condition, without outdoor storage of clutter of any type and free of graffiti and litter. The applicant shall deposit trash in the covered bin within the trash enclosure and lock the bin and keep the gates on the enclosure closed and locked to ensure adequate screening of trash facilities and prevent scavenging.
- 2.21 No fog machines, fireworks, open flames, or other devices shall be used on the premises.
- 2.22 Promoters shall not be used to promote any live entertainment, dancing, or Special Event.
- 2.23 There shall be compliance with all applicable State laws, including but not limited to, California Labor Code 6404.5, pertaining to smoking.
- 2.24 The business owner and manager shall be responsible for ensuring that parking occurs only in designated on-site parking stalls. If parking issues or

complaints arise due to the proposed use and the Development Services Director and/or Police Chief determine that the parking issues associated with the proposed use are found to be disruptive to surrounding tenants and/or properties, the manager/operator shall be required to address the issues through mitigation measures to eliminate issues and complaints including, but not limited to, modifying the peak hours of operation, reducing the maximum number of persons permitted in the buildings, and/or employing additional security personnel. Any mitigation measures may require a modification to the Conditional Use Permit, at the discretion of the Development Services Director. Any disagreement between the applicant and staff on mitigation measures shall be presented to the Planning Commission for direction.

3.0 Police Department

- 3.1 If, at the discretion of the Police Chief or Fire Chief, security is determined to be ineffective at any time, changes to the security plan or business' operational characteristics may be required, which may include, but is not limited to, reduction of hours, employment of additional security personnel, etc. These modifications may require a conditional use permit modification at the discretion of the Development Services Director.
- 3.2 The business owner shall undertake steps to prevent disturbances inside the establishment to the satisfaction of the Police Chief, as follows:
- (A) Staff and servers shall ensure that alcoholic beverages are not being consumed by minors and that there are no disturbances or other unlawful violations occurring within the business premises.
 - (B) A strict identification policy shall be implemented to prevent consumption of alcoholic beverages by minors.
 - (C) Staff and servers shall ensure that there are no sales or service of alcoholic beverages to obviously intoxicated persons. All such persons shall be requested to leave. All such persons who appear to pose a safety concern by being intoxicated and who have no suitable escort, or who is unable to care for himself/herself, or in any other appropriate situation, shall be offered transportation through a taxi service at the individual's expense. If said individual refuses such assistance, the business owner's security staff shall notify the Upland Police Department.
 - (D) The business owner's management shall support any server's decision to stop service to any guest that appears obviously intoxicated.
 - (E) Employees and contracted employees shall not consume alcoholic beverages on the premise.

(F) The business owner shall post on the premises of the business a list of taxi service phone numbers at visible locations.

(G) The business owner shall post "No Loitering" signs in the parking lot.

If these measures are deemed to be insufficient by the Police Chief, the applicant shall implement more effective security personnel procedures, at the discretion of the Police Chief.

- 3.3 The owner/operator shall employ professional security personnel for the duration of any banquet event regardless of the time or day of the week at a level approved by the Police Chief and Development Services Director, and in compliance with any policies issued by the Police Chief and Development Services Director. The security personnel shall prevent any disturbances inside and outside the banquet facilities, keep guests within the boundaries of the banquet facilities, and prevent guests from loitering, littering, or engaging in disturbances. One bench immediately outside the south side of tent shall be allowed to minimize the congregation of people outside the tent. All security and management personnel shall be in uniform and shall have electronic communication abilities with each other and with the Police Department at all times. If the number of security personnel is deemed to be insufficient by the Police Chief, the applicant shall hire additional personnel or implement more effective security personnel procedures, at the discretion of the Police Chief.
- 3.4 The business owner shall enroll all employees serving alcoholic beverages to patrons in a certified training program approved by the State Department of Alcoholic Beverage Control (ABC) for the responsible sales of alcohol. The training shall be offered to new employees on no less than a quarterly basis.
- 3.5 The manager on duty shall be at least 21 years of age.
- 3.6 Performers, guests, employees, and/or contracted employees shall not perform or engage in any behavior in any way that would violate existing laws or ordinances pertaining to indecent exposure, and/or that would constitute an adult business as defined in the Upland Municipal Code Chapter 17.122.
- 3.7 The business owner shall install signs at the inside of all exits advising customers that alcoholic beverages may not be removed from the premises.
- 3.8 Adequate lighting shall be provided on the exterior of the building, including within all parking lot and walkway areas, to the satisfaction of the Police Chief and Development Services Director. Lighting shall create a minimum of three (3) foot candles in all areas of the site and light fixtures shall be shielded to direct light downward to avoid creating light and glare on adjacent properties. Specifically, all exterior lights shall be directed downward and shielded such that light is directed to the ground and does not

reflect off of the tent material or shine directly into neighboring properties. A photometric plan shall be submitted with the plan check plans, and shall be approved by the Police and Development Services Departments prior to permit issuance for tenant improvements. Lighting shall be functioning at all times and shall be subject to field inspection by the Police Department prior to occupancy.

- 3.9 No loitering, unruliness, or boisterous activities shall be permitted on-site. Adequate staffing, management, and supervisory techniques shall be provided to prevent loitering, unruliness, and boisterous activities of guests outside the business or on public property. As currently set forth in the California Penal Code, loitering shall be defined as "the act of delaying or lingering without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered."
- 3.10 The premises and the area adjacent to the premises shall be maintained free of graffiti and shall be removed within 48 hours of its appearance or upon notification to the Applicant.
- 3.11 If, at the discretion of the Police Chief or Fire Chief, security is determined to be ineffective at any time, a security plan shall be required. Operational changes may be required including, but not limited to, or elimination of hours of live entertainment employment of additional security personnel, etc. These modifications may require a conditional use permit modification at the discretion of the Development Services Director.
- 4.0 Fire Department
- 4.1 Complete architectural and structural building plans, including all specifications, shall be submitted to the Fire Department for review prior to the issuance of any building permits. These plans and specifications shall include, but are not limited to, construction type, exits, fire protection equipment, building protection, and interior finish. The developer is responsible for, and shall apply for and receive, all fire department permits, paying all necessary fees prior to beginning construction.
- 4.2 The applicant shall coordinate with the Fire Department on construction of the facility and submit a construction schedule and plan prior to permit issuance.
- 4.3 Contractor's license number, including expiration date, wet stamp, and signature of the contractor licensee shall be on each plan
- 4.4 Provide an accurate description of the scope of work for the project on the plans.

- 4.5 This project is required to comply with the 2010 California Fire Code as amended in the Upland Municipal Code, and Upland Fire Department development standards.
- 4.6 In accordance with Section 3103.1 of the California Building Code, the applicant shall install fire sprinklers in the event tent. The applicant shall be allowed a 90 day period from the issuance of construction permits in which to obtain a fire sprinkler permit, complete installation of fire sprinklers, and perform testing and pass final inspection. During this 90 day period, temporary occupancy shall be granted under the condition that contracted Fire Watch be present on the premises at the cost of the applicant. If the fire sprinklers are not installed within 90 days of construction permits, the tent shall be removed and no permanent occupancy will be granted. Prior to contracting with a Fire Watch or changing Fire Watch personnel, the applicant shall submit information regarding the qualifications of the selected Fire Watch personnel to the Fire Chief. If the Fire Chief determines that the selected personnel do not have adequate training or experience, the applicant shall select alternative personnel to the satisfaction of the Fire Chief. The Fire Watch shall be responsible for ensuring that the maximum building occupancy is not exceeded and that the applicant is providing safe conditions for patrons at all times.
- 4.7 In the event that the maximum occupancy within an banquet room is exceeded, or where any fire detection, suppression or alarm system component has been interrupted or is not operational, the Fire Chief shall have the discretion to require that the applicant obtain and pay for the services of a Fire Watch within twenty-four hours of being notified by the Fire Chief that a Fire Watch is being required. Prior to contracting with a Fire Watch or changing Fire Watch personnel, the applicant shall submit information regarding the qualifications of the selected Fire Watch personnel to the Fire Chief. If the Fire Chief determines that the selected personnel do not have adequate training or experience, the applicant shall select alternative personnel to the satisfaction of the Fire Chief. The Fire Watch shall be responsible for ensuring that the maximum building occupancy is not exceeded and that the applicant is providing safe conditions for guests.
- 4.8 If the event tent facility exceeds twenty (20) fire sprinkler heads, the applicant shall install a fire alarm system and obtain the necessary fire alarm permits from the Finance Department.

5 Public Works/Engineering

- 5.0 Prior to the issuance of any construction or grading permits, the applicant shall submit grading plans and utility plans for plan check to the Development Services Department as a complete package. The plan submittal shall include the following.

- (A) A complete package including grading, composite utility, and any appropriate reports and back up documents. Incomplete submittals shall be rejected.
 - (B) Plans prepared on 24" x 36", 4 mil mylars on City Standard title block. This includes water, grading, and erosion control. No "cut and paste," "sticky-backs," "zip-a-tone," "Kroy lettering," or other tape shall be permitted on final originals.
 - (C) A map/plan that demonstrates the location of all drainage. All drainage shall be directed on-site to points so indicated upon the subject map/plan. Any deviation will require re-submittal to the Administrative Committee for approval. Location, direction, and devices for conveying site drainage shall be subject to review and approval by the Public Works Director.
 - (D) Composite Utility Plans submitted in conjunction with the grading plan. Any easements shall be dedicated to the appropriate Utility Company as required to accommodate the location of that facility. The subject project shall be served by underground utilities. All utility plans (Edison, Telephone, and Cable TV) shall be submitted to the Public Works Department for review and approval prior to the issuance of any permits.
 - (E) A grading plan shall be approved per all applicable Engineering Directives and the CU-E Series Standard Drawings; said plan shall be reviewed and approved prior to a grading permit.
- 5.1 Owner/Developer shall be required to arrange for a PRE-CONSTRUCTION MEETING with the Public Works Department after the issuance of any permits but before commencing work.
 - 5.2 Prior to issuance of a grading permit, the applicant shall conduct a pre-construction survey to identify potential bird nests as required by the Migratory Bird Treaty Act. If any potential impacts are found, the applicant shall notify the Development Services Department.
 - 5.3 The Owner/Developer shall employ a qualified PROFESSIONAL ENGINEERING FIRM to perform design and inspection services as outlined in Engineering Directive General Series before issuance of any permits (ED-G-2).
 - 5.4 As-built plans (grading plans including all utilities) shall be submitted prior to occupancy release. Electronic drawing files on compact disc (CD's) shall be submitted to the City for file in the format acceptable by the City prior to occupancy release.

- 5.5 All Ordinances, Policy Resolutions, and Standards of the City in effect at the time this project is approved shall be complied with as a condition of this approval.
- 5.6 No Certificate of Occupancy, or any other final clearance needed prior to occupancy, shall be given until all other conditions are met.
- 5.7 Prior to occupancy, asphalt paving, landscape, irrigation, etc. that is damaged during the construction shall be repaired or replaced to the City's satisfaction.
- 5.8 All utility companies (for non-City owned utilities) shall be contacted to establish appropriate easements to provide services to each parcel.
- 5.9 The Owner/Developer is responsible for research on private utility lines (Gas, Edison, Telephone, Cable, Irrigation, etc.) to ensure there are no conflicts with the site.
- 5.10 All existing on-site utility lines that conflict with this project shall be relocated, removed, or sealed to the satisfaction of the Public Works Director.
- 5.11 Prior to building permit issuance, the owner shall obtain a letter from Southern California Edison that the existing electrical transformer is adequate for the proposed use. Any new transformer shall be subject to approval of the Public Works and Development Services Director.
- 5.12 Dust control operations shall be performed by the Contractor at the time, location and in the amount required as often as necessary to prevent the excavation or fill work, demolition operation or other activities from producing dust in amounts harmful to people or causing a nuisance to persons living nearby or occupying buildings in the vicinity of work. The Contractor is responsible for compliance with Fugitive Dust Regulations issued by the Southern California Air Quality Management District (SCAQMD).
- 5.13 The Developer shall apply water as often as necessary to all active construction areas to control dust emissions. Control of dust shall be by sprinkling of water, use of approved dust preventatives, modifications of operations or any other means acceptable to the Engineer, City of Upland, the Regional Water Quality Control Board RWQCB, the South Coast Air Quality Management District (SCAQMD), and any Health or Environmental Control Agency having jurisdiction over the facility. The Engineer shall have the authority to suspend all construction operations if, in their opinion, the Contractor fails to adequately provide for dust control.
- 5.14 If the amount of impervious surfaces exceeds 5,000 square feet as shown in the grading plan, the applicant shall submit a Water Quality Management Plan (WQMP) (reference City Of Upland "Construction Stormwater Guidelines" and the County of San Bernardino "Guidelines for New Development and

Redevelopment”) for review and approval by the City Of Upland, Public Works Department, Environmental Division. The WQMP shall include a description and map of the project along with an outline of structural and non-structural Best Management Practices (BMPs), which apply to the project pursuant to the “New Development and Redevelopment Guidelines.” If required, the subject WQMP shall be approved prior to the issuance of grading or building permit. Please contact Mr. Saul Martinez at (909) 921-9241 for any questions and or details.

- 5.15 A Waste Management Plan (WMP) along with required Forms “A” and “B” are necessary to demonstrate compliance with the Municipal Code 13.28.620 that requires projects to salvage, reuse, or recycle at least 50% of construction and demolition debris generated by the project. This code was adopted to assist the City of Upland in meeting the State mandated diversion requirement of 50% of all waste generated. In developing a WMP, the owner/developer shall specifically identify:
- (A) All waste materials that will be generated and complete “Form A”. “Form A” is to accompany the Building Permit Application, and shall be submitted one week prior to permit issuance. “Form A” shall be approved prior to permit issuance.
 - (B) The procedure for management, control and disposition of all refuse and waste materials generated. “Form B” shall be submitted with receipts is to accompany the Certificate of Occupancy request. “Form B” shall be approved prior to occupancy.

The Owner/Developer shall submit a WMP along with the required forms to Integrated Waste Management for review and approval. Contact the Engineering Division at (909) 931-4317 for details.

- 5.16 All owner/developer’s contractors/subcontractors will be required to identify, maintain proper control and provide documentation for the deposition of waste materials described in the Waste Management Plan.
- 5.17 All refuse and solid wastes generated by commercial construction and operation activities shall be stored in approved containers at all times and shall be placed in a manner so that visual, noise or other impacts and environmental public health nuisances are minimized.

6.0 Review/Compliance

- 6.1 The Planning Commission shall review the use 90 days, 180 days, and on an annual basis following the date of final inspection, or as needed at the discretion of the Development Services Director, to determine whether the applicant and operators are operating the use in a manner that is compatible with the community. The Planning Commission may establish additional conditions of approval that are necessary to eliminate any issues that arise

from the operation of the use that adversely impact the public health, welfare, and safety, or may direct staff to initiate revocation proceedings. The conditional use permit may be revoked if the permittee, his agents or assigns, or employee(s) of the establishment, or any other person connected or associated with the permittee or his business establishment, or any person who is exercising managerial authority of the business establishment has:

- A. Violated any rule, regulation, or condition of approval adopted by the Planning Commission relating to the conditional use permit or contained in the Upland Municipal Code, or state or federal regulations. Violation of any provision of the Upland Municipal Code (UMC) or the conditions of approval set forth in this resolution, shall be deemed to constitute an infraction of the Upland Municipal Code, and shall be subject to the applicable fines and penalties, including the possibility of revocation of this permit.
- B. Conducted the operation permitted hereunder in a manner contrary to the peace, health, safety, and general welfare of the public, or in a manner which either generates or contributes to noise and/or health/sanitation nuisances, or which results in undesirable activities that negatively affects adjacent properties or creates an increased demand for public services.

SECTION 4. APPEAL. Pursuant to Upland Municipal Code Section 17.16.070, the decision of the Planning Commission may be appealed to the City Council provided that written notice of the appeal is filed with the City Clerk within fifteen (15) days after the date of the Planning Commission's adoption of this Resolution. Failure to file a timely appeal shall constitute a waiver of the right of appeal, and the decision of the Planning Commission shall be final.

SECTION 5. CERTIFICATION. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this Resolution, and shall cause this Resolution and his certification to be entered in the Book of Resolutions of the Planning Commission of the City.



 Shelly Verrinder, CHAIR PRO TEM

ATTEST:



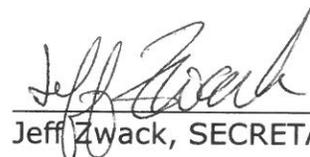
Jeff Zwack, SECRETARY

I HEREBY CERTIFY that the foregoing Resolution was duly and regularly passed and adopted by the Planning Commission of the City of Upland at a regular adjourned meeting thereof held on the 26th day of March, 2014, by the following roll call vote:

AYES: King, Morris, Velto, Verrinder

NAYS: None

ABSENT: Moga, Timm, Schwary



Jeff Zwack, SECRETARY

Exhibit C
Acceptance of Conditions





DEVELOPMENT SERVICES DEPARTMENT
PLANNING DIVISION
Telephone (909) 931-4130
Facsimile (909) 931-4321

ACCEPTANCE OF CONDITIONS

June 4, 2012

Jeff McNeal
Upland Hills F&B Inc.
1231 E. 16th St.
Upland, CA 91784

Subject: *Planning Commission Approval of Conditional Use Permit No. CUP-11-05*

Dear Mr. McNeal,

Enclosed please find the approved resolution for Conditional Use Permit No. CUP-11-05 as approved at the Planning Commission meeting on May 26, 2012. CUP-11-05 allows for the establish and construct an approximately 4,000-square-foot permanent event tent facility at the Upland Hills Country Club located at 1231 E. 16th Street (APN# 1044-491-21) subject to conditions of approval set forth in the resolution.

In accordance with the conditions of the approved resolution the owner and applicant are required to acknowledge acceptance of these conditions, sign and date below, and return the signed form to the City of Upland Planning Division before the approval becomes effective.

If you have any questions, please call me at (909) 931-4331. Thank you for your prompt attention to this request.

A handwritten signature in black ink, appearing to read "Jeffrey Borchardt".

Jeffrey Borchardt
Planning Intern

As the *property owner* for the above listed project, I understand, acknowledge, and agree to implement and comply with all conditions of approval contained within the approved resolution dated May 26, 2012.

Printed Name: MICHAEL WILM

Signed:

Date: 11/27/12

As the *applicant* for the above listed project, I understand, acknowledge, and agree to implement and comply with all conditions of approval contained within the approved resolution dated May 26, 2012.

Printed Name: Jeffrey McNeal

Signed:

Date: 11/27/12

Exhibit D
Building Division Sign Off



Inspection Items for B201200212

10:15 09/17/2019

Sec	Item Id	Description	Appr	Req	Items	Action	Inheritable
*	1	Permit Information	No	O	0		No
*	20	Bldg Roof Nailing/Deck	No	O	0		No
*	26	Bldg Framing	No	O	0		No
*	30	Bldg Exterior Lath	No	O	0		No
*	32	Bldg Insulation	No	O	0		No
*	34	Bldg Internal Lath	No	O	0		No
*	36	Bldg Drywall	No	O	0		No
*	98	Bldg Final Building	Yes	R	3	AP	No
*	110	Plum Underground Plumbing	No	O	0		No
*	112	Plum Rough Plumbing	No	O	0		No
*	114	Plum Rough Gas	No	O	0		No
*	116	Plum Fixtures	No	O	0		No
*	118	Plum Sewer Cap/Demo	No	O	0		No
*	120	Plum Building Sewer	No	O	0		No
*	122	Plum Water Heater	No	O	0		No
*	124	Plum Shower Pan	No	O	0		No
*	126	Plum Water Service	No	O	0		No
*	128	Plum Roof Drain/Overflows	No	O	0		No
*	130	Plum Grease Interceptor	No	O	0		No
*	152	Plum Sewer Lateral	No	O	0		No
*	154	Plum Sewer Saddle/Y	No	O	0		No
*	156	Plum Sewer Cesspool Filled	No	O	0		No
*	158	Plum Sewer Clean Out	No	O	0		No
*	194	Plum Final Sewer	No	O	0		No
*	196	Plum Final Gas Test	Yes	O	1	AP	No
*	198	Plum Final Plumbing	Yes	O	1	AP	No
*	210	Elec Power Pole	No	O	0		No
*	212	Elec Sales Lot Lighting	No	O	0		No
*	214	Elec Conduit/Underground	Yes	O	1	AP	No
*	216	Elec Rough Electrical Walls	No	O	0		No
*	218	Elec Rough Electrical Ceiling	No	O	0		No
*	220	Elec Service	Yes	O	2	AP	No
*	222	Elec UFER Ground Grd Rod/Cold	No	O	0		No
*	224	Elec UFER Cord.	No	O	0		No
*	298	Elec Final Electrical	Yes	O	2	AP	No
*	310	Mech Venting	No	O	0		No
*	312	Mech Furnace - A.C.	No	O	0		No
*	314	Mech Rough HVAC/Ducts	No	O	0		No
*	316	Mech Fire Dampers	No	O	0		No
*	318	Mech Rated Shaft	No	O	0		No
*	320	Mech Commercial Hood	No	O	0		No
*	322	Mech Smoke Detector	No	O	0		No
*	324	Mech Combustion Air	No	O	0		No
*	326	Mech Metal Fireplace	No	O	0		No
*	328	Mech Compressor/Setback	No	O	0		No
*	398	Mech Final Mechanical	No	O	0		No
*	12	Bldg Footings and Forms	Yes	R	2	AP	No

Total Rows: 47



STAFF REPORT

ITEM NO. Public Workshop

DATE: SEPTEMBER 25, 2019

TO: PLANNING COMMISSION

FROM: ROBERT D. DALQUEST, DEVELOPMENT SERVICES DIRECTOR

SUBJECT: PUBLIC WORKSHOP ON AN AMENDMENT TO CHAPTER 17.37 OF THE UPLAND MUNICIPAL CODE REGULATING ACCESSORY DWELLING UNITS IN ACCORDANCE WITH RECENT CHANGES TO STATE GOVERNMENT CODE SECTION 65852.2.

SUMMARY

On August 28, 2019, the Planning Commission held a study session and received a presentation by staff on recent changes in State law regarding Accessory Dwelling Units (ADUs), and on a "Draft" ADU Ordinance that staff prepared in accordance with Section 65852.2 of the State Government Code (ADU Law).

The Public Workshop is intended to provide the Planning Commission an opportunity to further review and discuss the "Draft" ADU Ordinance, and for the Commission to obtain public comments on the ordinance. At the conclusion of the Public Workshop, staff will incorporate any suggested changes to the Draft ADU Ordinance and initiate a Zoning Code Amendment to Chapter 17.37 of the Upland Municipal Code.

RECOMMENDATION:

Hold a Public Workshop on the Draft ADU Ordinance, receive comments from the public on the ordinance, and provide policy direction to staff on any aspect of the regulations contained in the Draft ADU Ordinance (See **Exhibit 1**).

DISCUSSION:

The City's Zoning Code in Chapter 17.37 provides regulations for secondary dwelling units, but is not compliant with the recent changes to State law. Under the new ADU Law, any accessory dwelling unit ordinance that does not comply with Section 65852.2 of the State Government Code is void. And, until the city adopts a new ordinance, the city must approve ADUs based only on the ownership, zoning, density, parking, and size standards in the statute. If a city adopts a new ordinance that complies with the statute, then the city may apply local development standards. Regardless of which standards apply, the city must approve or disapprove ADU applications ministerially without public input or a hearing within 120 days of receipt.

Staff has attached the complete staff report and attachments from the August 28, 2019 study session for the Commission's reference (See **Exhibit 2**). The staff report highlights key policy considerations for the Planning Commission to consider in providing direction on the desired regulations for updating the City's ADU ordinance; as well as staff's recommendation and alternative options. The key policy issues discussed included:

- Designating areas where ADUs are to be permitted/not permitted;
- Maximum size for new ADUs;
- Options for addressing converted ADUs wholly within existing single-family homes;
- Occupancy requirements for all types of ADUs;
- Parking requirements for new ADUs; and
- Narrowly defining "Public Transit" in State law to reduce the area of the City where parking is waived for a new ADU.

Summary

There are many other standards contained within the Draft ADU Ordinance to consider. Staff seeks the Planning Commission's and public's input to finalize the Draft ADU Ordinance which will be processed subsequently through the Zoning Code Amendment Process. Since this would be a legislative action, the Planning Commission will be a recommending body on the Zoning Code Amendment and the City Council the final acting body. Both meetings will be noticed public hearings.

ATTACHMENTS:

- Exhibit 1: New Draft ADU Ordinance
Exhibit 2: Copy of August 28, 2019 Planning Commission Staff Report and Attachments

Exhibit 1
New Draft ADU Ordinance



Chapter 17.37

ACCESSORY DWELLING UNITS

Section:

- 17.37.010 Purpose**
- 17.37.020 Definitions**
- 17.37.030 Non-conforming Status**
- 17.37.040 Permitted Zones**
- 17.37.050 Use Restrictions**
- 17.37.060 General Development Standards for All Accessory Dwelling Units**
- 17.37.070 General Development Standards for Attached and Detached Accessory Dwelling Units**
- 17.37.080 Development Standards for Newly Constructed Attached Accessory Dwelling Units**
- 17.37.090 Development Standards for Newly Constructed Detached Accessory Dwelling Units**
- 17.37.100 Development Standards for Converted Accessory Dwelling Units**
- 17.37.110 Parking**
- 17.37.120 Parking Exceptions**
- 17.37.130 Restrictive Covenant**
- 17.37.140 Appeal of Development Services Director's Decision**

17.37.010 Purpose.

The purpose of this section is to provide reasonable regulations for the development of accessory dwelling units on residentially zoned properties on parcels developed or proposed to be developed with a single-family dwelling. Such regulations are intended to mitigate potential impacts to neighborhoods and comply with the goals and policies of the City's General Plan; as well as comply with the requirements codified in the State Planning and Zoning Laws related to accessory dwelling units in residential areas, including California Government Code Section 65852.2.

17.37.020 Definitions.

1. "Accessory dwelling unit" or "ADU" means an attached or detached residential dwelling unit that provides complete independent-living facilities for one or more persons on the same parcel as the primary dwelling. "Complete independent-living facilities" means permanent provisions for living, sleeping, eating, cooking, and sanitation. An ADU also includes an efficiency unit, as defined in Section 17958.1 of the Health and Safety Code, and a manufactured home, as defined in Section 18007 of the Health and Safety Code, but does not include Recreational Vehicles or Tiny Homes which are mounted on a chassis for wheeled conveyance. There are three types of ADUs: attached, converted, and detached.
2. "Attached accessory dwelling unit" means an ADU that is attached to the primary dwelling on the same parcel. An attached ADU does not include a manufactured home.

3. “Converted accessory dwelling unit” means an ADU that is created by converting existing living area within (a) the primary dwelling unit, or (b) an existing accessory structure, such as a guest house or garage.
4. “Detached accessory dwelling unit” means an ADU that is detached from the primary dwelling unit.
5. “Existing accessory structure” means an accessory structure, as defined in this chapter that was legally established and existing prior to the adoption of this ordinance on _____, 2019.
6. “Existing garage” means a garage that was legally established and existing prior to the adoption of this ordinance.
7. “Living area” is defined as the interior habitable area of a legal dwelling unit, including basements and attics but not including a garage or any accessory structure.
8. “Owner” means any person appearing on the latest equalized assessment roll of the County of San Bernardino, including any part owner or joint owner.
9. “Primary dwelling unit” means a detached single-family dwelling on a single legal parcel.
10. “Vacation Home Rental” means a dwelling unit (including either a single-family detached or single-family attached unit) rented for the purpose of overnight lodging for a period of not less than one night and not more than thirty (30) consecutive days. The guest enjoys the exclusive private use of the unit.

17.37.030 Non-conforming Status.

1. An ADU may be permitted on a parcel zoned (RM) Residential Multi-Family that contains only an existing detached single family dwelling provided the dwelling was legally established at the time of construction and provided the establishment of the ADU does not create any new non-conformances, except as provided herein.
2. The primary dwelling unit shall comply with the parking standards contained in Chapter 17.11 prior to or concurrent with the establishment of an ADU.

17.37.040 Permitted Zones. Accessory dwelling units are permitted in the following single-family and multiple-family zones: RS-20 (Residential Single-Family Low), RS-15 (Residential Single-Family Low), RS-10 (Residential Single-Family Low), RS-7.5 (Residential Single-Family Medium), RM-10 (Residential Multi-family Low), RM-20 (Residential Multi-family Low), RM-30 (Residential Multi-family Medium), or a Residential land use designation in a Specific Plan.

17.37.050 Use Restrictions.

1. An ADU may be developed on a lot that meets either of the following:
 - (a) Contains a legally established primary dwelling unit; or
 - (b) Will have a legally established primary dwelling unit constructed concurrently with the ADU.
2. Only one ADU may be located on a parcel.
3. The primary dwelling unit or the ADU on the property shall be occupied by an owner of the property as their permanent residence. "Occupy" here means the right to use the unit exclusively at will. The owner may rent out either unit for longer than a 30-day period, but in no case shall the two units be concurrently rented.
4. The ADU shall not be sold separately from the primary dwelling unit.
5. The ADU shall not be rented for periods of fewer than 30 days and may not be used as a Vacation Home Rental, as defined in this Chapter. Additionally, a primary dwelling unit containing an ADU on the same parcel may not be used as a Vacation Home Rental.
6. An ADU that is constructed on a parcel that is zoned RM (Residential Multi-Family) and that has a primary dwelling unit shall preclude the construction of any additional dwelling units that would otherwise be allowed under Section 17.04.030 of this Chapter, until the ADU is removed from the parcel.
7. The Development Services Director, or his or her designee, shall review the application and construction plans for an ADU for compliance with this Chapter and shall approve or deny ministerial permits for an ADU within 120 days of application submittal.

17.37.060 General Development Standards for All Accessory Dwelling Units.

1. State Building and Fire Codes. All ADUs shall comply with all applicable State Building and Fire codes and have sufficient side and rear setbacks for fire safety.
2. Fire Sprinklers. An ADU shall comply with the California Residential Code (24 Cal. Code Regulations, Part 2.5; "CRC"), including sections R313 and R-13.2, as amended by Title 15 (Buildings and Construction) of this code.
3. Independent Access. An ADU shall have exterior access that is (a) separate from that of the existing primary dwelling unit and (b) not located on the front elevation of the primary

dwelling unit that parallels the street, or the elevation of the detached ADU that is visible from the street.

4. The property on which the ADU is to be developed shall be free of any violations of the Upland Municipal Code.

17.37.070 General Development Standards for Attached and Detached Accessory Dwelling Units.

1. **Minimum Lot Area.** The minimum lot area for a lot on which an ADU is to be established shall be the minimum established for the applicable zoning district, specific plan or 7,500 square feet in area, whichever is greater.
2. **Minimum Lot Width and Depth.** The minimum lot width and depth for a lot on which an ADU is to be established shall be the minimum lot width and depth that is established for the applicable zoning district or specific plan generally.
3. **Lot Coverage.** The maximum lot coverage for a lot on which an ADU is to be established is that required in the applicable zoning district or specific plan generally.
4. **Fire Sprinklers.** A newly constructed attached or detached ADU shall have an automatic fire sprinkler system as required by section 17.37.060(2) above.
5. **Setbacks.** An ADU must meet the minimum setback standards of the applicable zoning district or specific plan, except as provided herein. In addition, no setback shall be required for an existing garage being converted to an ADU or to a portion of an ADU, and a setback of 5 feet from the side and rear lot lines is required for an ADU that is constructed above an existing garage that is nonconforming as to setback.
6. **Utility Hookups.** An ADU shall be provided with utility hookups to accommodate installation of a washer and dryer.
7. **Design.** The ADU must use exterior materials and textures, colors, windows types, roofing materials and roof pitch that appear the same as those of the primary dwelling unit. Exterior stairs that provides independent access to a second floor ADU shall not be visible from the street.
8. **Passageway.** No passageway shall be required in conjunction with the construction of an ADU. For the purpose of this section, “passageway” shall mean a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU.

9. Utilities. Adequate public utilities and services shall be available to serve the ADU for health and safety purposes. An ADU shall not be considered a new residential use for the purposes of calculating connection fees or capacity charges for sewer and water.
9. Connections and Fees. In the event that an increase in demand for water pressure is created by additional plumbing fixture units for an ADU and the capacity exceeds the existing water meter and water service line, the property owner will be required to upgrade the service and meter to meet the new demand. The meter size shall be determined by the California Plumbing Code. Utility connection fee and capacity charges shall be proportionate to the burden imposed by the ADU on the water or sewer system based on the number of plumbing fixtures.

17.37.080 Development Standards for Newly Constructed Attached Accessory Dwelling Units.

Attached ADUs shall comply with all development and design standards of sections 17.37.060 and 17.37.070, in addition to the following:

1. Maximum Size. An attached ADU shall not exceed 50 percent of the existing living area of the primary dwelling unit, with a maximum increase in floor area of 1,200 square feet.
2. Maximum Height. The height of an attached ADU shall not exceed the height limit applied to a primary dwelling unit in the applicable zoning district or specific plan.

17.37.090 Development Standards for Newly Constructed Detached Accessory Dwelling Units.

Detached ADUs shall comply with all development and design standards of sections 17.37.060 and 17.37.070, in addition to the following:

1. Maximum Size. A detached ADU shall not exceed 1,200 square feet.
2. Maximum Height. The height of a detached ADU shall not exceed thirty-five (35) feet in height.
3. Separation. There shall be a minimum of seven (7) feet separating the primary dwelling unit from a detached ADU, and a minimum of six (6) feet separating a detached ADU and any detached accessory structure. Separation is measured from the nearest exterior walls or surfaces of each dwelling unit or structure.
4. Front Setback. A detached ADU shall be setback a minimum of five (5) feet further than the required front setback of the applicable zoning district.

5. Rear Setback. A detached ADU may encroach into the required rear setback as long as it is no closer than ten (10) feet from the rear property line.

17.37.100 Development Standards for Converted Accessory Dwelling Units.

1. A converted ADU is subject to the standards of section 17.37.060, but is not subject to the development and design standards of section 17.37.070 as long as the ADU complies with all of the following requirements (otherwise it is deemed an attached ADU):
 - (a). Conversion of Existing Living Area. The converted ADU must be wholly contained within the existing living area in the primary dwelling unit or an accessory structure.
 - (b). Maximum Size. A converted ADU shall not exceed 50 percent of the existing living area of the primary dwelling unit, and it shall not exceed 1,200 square feet.
 - (c). Lot Coverage. A converted ADU is permitted on a parcel that is non-conforming as to the percentage of lot coverage specified in the applicable zoning district or specific plan. By definition, a converted ADU does not add any new floor area and so cannot increase the lot coverage.
2. Utility Connection and Fees. No new or separate utility connection is required and no connection fee or capacity charges shall be collected by the city for a converted ADU.

17.37.110 Parking. All attached and detached ADUs must meet the following parking standards in addition to the required off-street parking for the primary dwelling unit on the site.

1. One parking space per ADU. The space may be provided as tandem parking, including on an existing driveway or in setback areas, excluding the non-driveway front-yard setback.
2. When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an ADU, replacement parking for the primary dwelling unit shall be required on the same lot as the ADU and be in the configuration as a garage, carport, or a combination of both.
3. To the extent that on-street parking is prohibited generally on a particular street, any off-street parking that is required for an ADU shall be provided on-site.

17.37.120 Parking Exceptions. No off-street parking shall be required for a newly constructed ADU in any of the following circumstances:

1. The ADU is located within one-half mile of public transit station. Public transit here means as an existing rail transit station or the intersection of two or more major bus routes.
2. The ADU is located within an officially recognized and protected architecturally and historically significant historic district.

3. The accessory dwelling unit is a converted ADU.
4. When on-street parking permits are required but not offered to the occupant of the ADU.
5. When there is a car share vehicle location within one block of the ADU. For purposes of this subsection “car share vehicle” means a city-designated fixed location for car-share pickup and drop off that is available to the public.

17.37.130 Restrictive Covenant. Prior to issuance of a building permit for an ADU, a restrictive covenant shall be recorded against the title of the property in the San Bernardino County Recorder’s Office and a copy filed with the Planning Department. Said covenant shall run with the land, and shall bind all future owners, heirs, successors, or assigns. The form of the restrictive covenant shall be provided by the City and shall provide that:

1. The ADU shall not be sold separately from the primary dwelling unit.
2. The primary dwelling unit or the ADU on the property shall be occupied by an owner of the property as their permanent residence. “Occupy” here means the right to use the unit exclusively at will. The owner may rent out either unit for longer than a 30-day period, but in no case shall the two units be concurrently rented.
3. The ADU is restricted by all provisions in Chapter 17.37 (Accessory Dwelling Units).
4. Neither the ADU nor the primary dwelling unit shall be rented for a period of less than thirty (30) days.
5. If the ADU is smaller than 400 square feet because it qualifies as an efficiency unit, the occupancy of the ADU is limited to that which is allowed for the size of the unit under Title 24, California Code of Regulations, Section 1208.4 — either two or three persons, whichever applies.
6. The restrictive covenant runs with the land and may be enforced against future purchasers.
7. The restrictive covenant may be removed if the property owner eliminates the ADU as evidenced by the removal of the kitchen.
8. The restrictive covenant shall be enforced by the Development Services Director, or his or her designee, for the benefit of the City of Upland. Failure of a property owner to comply with the restrictive covenant may result in legal action against the property owner, and the City may obtain any remedy available to it at law or equity, including but not limited to obtaining an injunction enjoining use of the ADU in violation of the recorded restrictions or abatement of the illegal unit.

17.37.140 Appeal of Development Services Director’s Decision. Any person aggrieved by a determination of the Development Services Director, or his or her designee, to deny the ADU,

may file an application to appeal the decision to the Planning Commission within ten (10) business days of the date of the Development Services Director's written determination.

END

Exhibit 2

**Copy of August 28, 2019 Planning Commission
Staff Report and Attachments**





STAFF REPORT

ITEM NO. Study Session

DATE: August 28, 2019

TO: PLANNING COMMISSION

FROM: ROBERT D. DALQUEST, DEVELOPMENT SERVICES DIRECTOR

SUBJECT: STUDY SESSION ON A PROPOSED AMENDMENT TO CHAPTER 17.37 OF THE UPLAND MUNICIPAL CODE REGULATING ACCESSORY DWELLING UNITS IN ACCORDANCE WITH RECENT CHANGES TO STATE GOVERNMENT CODE SECTION 65852.2.

SUMMARY

The study session is intended to provide the Planning Commission an opportunity to review and discuss changes in State law regarding Accessory Dwelling Units (ADUs), and to provide feedback and policy direction on the contents of a "Draft" ADU Ordinance that staff prepared in accordance with changes in State law. Staff will incorporate any suggested changes from the Commission's discussion in the Draft ADU Ordinance and bring back any additional information requested by the Commission for review at a subsequent study session.

RECOMMENDATION:

Hold a study session to review recent changes to State law and provide policy direction to staff on an amendment to Chapter 17.37 of the Upland Municipal Code (See **Exhibit 1**) regarding ADU regulations for compliance with Sections 65852.2 and 65852.22 of the State Government Code.

BACKGROUND:

Accessory dwelling units, formerly known as “second dwelling units” or “granny units”, are small, secondary dwelling units with complete, independent living facilities for one or more persons. These units must have a kitchen, sleeping area, and bathing facilities to facilitate independent living, and can be either detached from or attached to the primary dwelling structure, or contained wholly within the existing living area of the primary dwelling. As these types of dwelling units have become a critical component of State housing law, they are now referred in State law as accessory dwelling units or ADUs. State law requires that all local jurisdictions allow and approve ADUs through a ministerial process (that is, a “by-right” approval without a public hearing, Design Review or other discretionary process). The State allows for local control over some development standards applied to ADUs.

In terms of recent changes in State ADU law, on January 1, 2017 the State chaptered Assembly Bill (AB) 2299 and Senate Bill (SB) 1069 in order to provide relief from California’s housing shortage, limit the authority of local jurisdictions to restrict ADUs, and streamline a local jurisdictions’ review of ADUs. The majority of changes are codified in Government Code sections 65852.2 and 65852.22 (See **Exhibit 4-California Department of Housing and Community Development Accessory Dwelling Unit Memorandum, dated December 2016**). The language in these amendments was not clearly drafted, which led to uncertainty and ambiguity in what State ADU Law requires of cities. Subsequently, on January 1, 2018, the legislature enacted further amendments to refine the mandates to support development of ADUs. Adopted Senate Bill 229 and Senate Bill 494 built upon the prior changes to ADU law (Government Code Section 65852.2) and further addressed barriers to the development of ADUs (See **Exhibit 5-Memorandum from HCD, dated May 2018**).

The intent of ADU law is a mandate to cities to streamline and relax regulation of ADUs to encourage their development. It is also evident that the State considers ADUs to be “accessory uses” to single-family residences, and not new residential units. As a result, ADU law supersedes the ability of cities to impose requirements on ADUs related to certain potential impacts, specifically parking and utilities. State ADU Law has a number of components. First, it greatly limits the conditions and requirements cities can impose on ADUs that are located wholly within existing single-family residences or within existing accessory structures (such as garages,

guesthouses, or pool houses). For purposes of this report, these ADUs will be referred to as "Converted" ADUs.

Second, it imposes a number of basic standards for ADUs that require new square footage, including additions to an existing single-family residence or accessory structure, new detached structures, and ADUs proposed in conjunction with new single-family residences. For purposes of this report, these ADUs will be referred to as "Attached" or "Detached" ADUs. Cities can impose additional standards and criteria on ADUs, provided that they adopt an ADU ordinance that is compliant with the State ADU law's requirements.

Finally, State ADU Law creates a third category of ADUs known as "Junior Accessory Dwelling Units." Junior ADUs are small units created out of existing bedrooms, which contain only efficiency kitchens and retain direct access to the primary unit. State ADU Law is clear that cities can choose to allow Junior ADUs or not. However, if a city elects to allow them, the standards and criteria by which they can be evaluated are quite strict. Staff is not recommending at this time that the ADU Ordinance include Junior ADUs since they are not mandated by the State.

The following is a brief summary of the recent changes in State law applicable to ADUs:

- Sets limitations on parking requirements that can be imposed by local jurisdictions and restricting any parking regulations under certain conditions.
- Permits conversion of existing accessory structures to ADU's, with extremely limited restrictions or requirements.
- Sets limits to minimum and maximum ADU sizes.
- Limits when fire sprinklers can be required, and limits certain fees.
- Clarifies that an ADU can be created through the conversion of a garage, carport or covered parking structure, and does not have to meet side or rear setbacks.
- Reduces the maximum number of parking spaces for an ADU to one space, and requires no parking standard under a range of specific conditions.
- Allows required parking spaces and replacement parking spaces to be located in any configuration, including tandem parking of two or more automobiles.
- Authorizes the Department of Housing and Community Development (HCD) to review and comment on ADU ordinances.

Moreover, State law requires ministerial approval of ADUs that meet the above criteria. However, local municipalities can set certain additional regulations, including:

- Regulating (prohibiting) use of ADUs as a short-term vacation home rental (short term is defined as less than 30 days).
- Requiring owner-occupancy of either the ADU or primary dwelling.
- Development standards where a unit is being created through new construction or additions, including new accessory structures. These standards can include height, minimum and maximum size, setbacks, lot coverage, separation between units, etc.

DISCUSSION:

The City's Zoning Code in Chapter 17.37 provides regulations for secondary dwelling units, but is not compliant with the recent changes to State law. Under the new ADU law, any accessory dwelling unit ordinance that does not comply with the new Section 65852.2 is void. And, until the city adopts a new ordinance, the city must approve ADUs based only on the ownership, zoning, density, parking, and size standards in the statute. If a city adopts a new ordinance that complies with the statute, then the city may apply the ordinance's local development standards. Regardless of which standards apply, the city must approve or disapprove ADU applications ministerially without public input or a hearing within 120 days of receipt. Staff has attached the City's existing ADU Regulations (Chapter 17.37) for the Commission's reference (See **Exhibit 2**). The Commission will note that the ADU regulations in Chapter 17.37 allows ADUs in single-family and multiple-family residential zones as mandated by State law, as well as the B/R-MU (Business/Residential Mixed-Use) zone as a permitted use.

This staff report highlights key policy considerations for the Planning Commission to consider in providing direction on the desired terms for updating the City's ADU ordinance. Staff has provided initial recommendations on each policy item, as well as alternative options. Overall, these initial recommendations are proposed for two purposes: 1) to better conform the City's ADU ordinance to State ADU Law; and/or 2) to clarify or improve the current code and review process for the sake of reducing barriers to the production of affordable housing.

The City's existing ADU requirements are juxtaposed with the new ADU law in a chart for the Commission's reference (See **Exhibit 3**). The following discussion presents options for ADU regulations including designating areas

where they are to be permitted/not permitted, maximum size for new ADUs, policy options for addressing converted ADUs wholly within existing single-family homes, occupancy requirements for all types of ADUs, and parking requirements for new ADUs.

Areas Where ADUs Are Permitted/Not Permitted

State ADU law permits cities to designate areas where ADUs are not permitted, so long as it does not unreasonably restrict the production of ADUs, which would be contrary to the legislation. To conform with State ADU law, it is important to continue to allow ADUs in all single-family and multiple-family residential districts so long as other criteria are met (i.e., parcel developed with a single family home only, compliance with lot coverage, height, minimum lot size, setbacks, separation between units, etc.), with the exception of certain areas.

In the Draft ADU Ordinance, staff included residential land use designations in a Specific Plan area. There are eleven (11) specific plans in the City which contain residential development. However, some of these areas are medium and high density and the lots may not be large enough to develop an ADU without impacts to the existing development. In addition, there are two land use designations that staff is recommending to be removed from the zoning districts that permit an ADU due to small lot sizes, or due to it being a mixed-use zone and the housing-type that would be developed alongside non-residential uses. The Draft ADU Ordinance contains the following recommendations:

1. Allows ADUs in a residential land use designation in a specific plan area among the permitted zones, provided the minimum lot size is at least 7,500 square feet (See #4 below).
2. Removes the B/R-MU (Business/Residential Mixed-Use) zoning district among the permitted zones where an ADU is permitted. Staff believes that the City can best accommodate a diversity of housing needs by allowing ADUs in all single-family and multiple-family residential zones. The B/R-MU zoning district is intended for areas in which business and/or light industrial uses are compatible with multiple-family, live/work or single-family units. The B/R-MU is generally located in several areas along the Metrolink railroad tracks, south of 9th Street.
3. Removes the RS-4 (Residential Single-Family Medium) zoning district among the permitted zones where an ADU is permitted. This zoning

district is intended as a zone with a minimum lot size of 4,000 square feet and typified with single-family homes with small front, side and rear setbacks. Staff recommends that this lot size is too small to contain two households or adequately meet the required standards.

4. Requires that a lot in a single-family zone or multiple-family zone where an ADU is permitted must either meet the minimum lot size of the applicable zone or the lot be a minimum lot size of 7,500 square feet, whichever is greater. The intent of this regulation is to prevent an ADU from being constructed on a lot that does not meet the minimum lot size in the applicable zoning district, as well as ensuring that an ADU is prevented from being developed on a lot that is too small for the increased density and in meeting the required standards.

The intent of the above recommendations are to limit ADUs in areas to reduce potential impacts to the community, such as the adequacy of water and sewer services and the impact of ADUs on traffic flow and public safety. Staff is seeking direction from the Planning Commission on the recommended areas to restrict ADUs, or the additional areas to permit ADUs. Staff believes that these are reasonable restrictions. Under ADU law, the California Department of Housing and Community Development (HCD), will be sent a copy of the approved ADU Ordinance for their review and comment. HCD has expressed concerns on approaches by local jurisdictions that are unreasonably restrictive to the production of ADUs.¹

Maximum Size for New ADUs

State ADU law contains somewhat conflicting requirements relating to maximum sizes, both setting forth maximum sizes to be included in city ordinances (1,200 square feet) and stating that cities may impose their own maximum sizes. HCD has offered some guidance, agreeing that while cities may impose their own maximum sizes, a "maximum unit size that unreasonably restricts opportunities would be inconsistent with the intent of the statute." It states, however, that "typical maximum unit sizes range from 800 square feet to 1,200 square feet."

Given HCD's guidance, staff's recommendation in the Draft ADU Ordinance is to be consistent with the Statute and the standards in Chapter 17.37 by

¹ According to HCD: "Utilizing approaches such as restrictive overlays, limiting ADUs to larger lot sizes, burdensome lot coverage and setbacks and particularly concentration or distance requirements (e.g., no less than 500 feet between ADUs) may unreasonably restrict the ability of the homeowners to create ADUs, contrary to the intent of the Legislature."

allowing a detached ADU to be a maximum size of 1,200 square feet, provided it meets the established development standards of the applicable zoning district, such as lot coverage, setbacks, separation between the primary unit and the ADU, etc. In terms of attached or converted ADUs, staff recommends consistency with the Statute and Chapter 17.37 by restricting this type of ADU to not exceeding 50 percent of the existing living area of the primary dwelling unit, but not exceeding 1,200 square feet.

The Planning Commission may consider a smaller maximum size, such as 800 square feet, which according to HCD is at the lower end of the range of a typical maximum size of an ADU. The Planning Commission may also want to consider varying the maximum size based on whether the unit is attached or detached, or based on the size of the existing structure. The Commission could take both approaches, for example by limiting attached ADUs to 800 square feet or 50% of existing floor area, whichever is larger, and limiting detached ADUs to 800 square feet or 35% of existing floor area, whichever is larger. It should be noted that this is an undefined area and may not fully conform to HCD guidance.

Converted ADUs

The Draft ADU Ordinance provides specific standards for converted ADUs relative to conformance with State ADU Law. These type of ADUs are permitted in any existing single-family dwelling or accessory structures, even if the structure is non-conforming, provided the application meets minimal requirements related to exterior access, side and rear setbacks, and the building code. However, to reduce any incentive for a property owner to build an accessory structure without permits and then (legally) convert it into an ADU, the Draft ADU Ordinance is written to require that accessory structure be in existence as of the effective date of the ordinance or be legally constructed. This approach recognizes the Legislature's understanding that converting existing space to another unit is likely to result in fewer impacts than new construction.

Occupancy Requirements for ADUs.

While State ADU Law specifies that cities must allow ADUs to be rented, cities may elect to limit rented ADU occupancy in two ways. First, cities may prohibit the use of ADUs for vacation home rentals (Less than 30 days). Second, cities may require the property owner to occupy either the single-family residence or the ADU. The City's existing ADU Ordinance is consistent

with this requirement, however the ordinance does not address vacation home rentals.

The Draft ADU Ordinance imposes both limitations, by requiring owner occupancy of at least one unit as required by the existing Statute, and prohibiting short-term vacation rental of ADUs. Owner occupancy encourages a long-term connection to the community and may therefore reduce nuisance impacts associated with the ADU. Moreover, existing second unit owners who constructed ADUs have been required under Chapter 17.37 to deed restrict their units to impose the owner-occupancy restriction and may view a reversal of this policy as unfair.

Short-term vacation home rentals present a complex policy question. On the one hand, ADUs have been touted as a mechanism for increasing housing diversity by creating smaller, more affordable long-term rental properties. This benefit may not be realized if ADUs are used for short-term vacation rentals. On the other hand, short-term rentals can provide both increased rental revenue and additional flexibility for property owners. These characteristics may increase housing affordability for single-family residences. The City may in the future consider a short-term rental ordinance, which may address some or most of the nuisance issues associated with short-term rentals if the Planning Commission wishes to recommend allowing them. However, most cities do not allow use of ADUs for short-term rentals in order to promote housing diversity. The Draft ADU contains the following recommendations:

1. Requires the primary dwelling unit or the ADU on the property be occupied by an owner of the property as their permanent residence, and that the owner may rent out either unit for longer than a 30-day period, but in no case shall the two units be concurrently rented.
2. Prohibits the ADU shall from being rented for periods of fewer than 30 days and may not be used as a "Vacation Home Rental". Additionally, a primary dwelling unit containing an ADU on the same parcel may not be used as a Vacation Home Rental as well.

Parking Requirements for ADUs

Generally, State ADU Law permits cities to require a maximum of one parking space per new ADU, provided that the requirement can be met with virtually any type of on-site parking space, including within setbacks (Except the non-driveway front yard setback) or in tandem. However, State ADU

Law also prohibits any parking requirements for two kinds of ADUs: (a) ADUs that are located within one-half mile of public transit and (b) Converted ADUs that are wholly contained within single-family residences. State ADU Law does not define “public transit,” though HCD has commented that it should be interpreted to include, at a minimum, bus stop and train station. HCD has also opined that cities cannot impose a “tighter headway” requirement, such as limiting it to bus stops that are served every 15 minutes during peak hours. The Draft ADU Ordinance defines “Public transit” as either an existing rail transit station or the intersection of two or more major bus routes (Transit point). The intent is to limit the areas in the City where a parking exemption for an ADU is allowed. There are three areas that would fall under this definition: (1) Metrolink station on A Street; (2) Bus transfer point at Euclid Avenue and Arrow Highway; and, (3) Bus transfer point at San Antonio Hospital and San Bernardino Road. The Statutory parking exemption for an ADU would apply to a lot within one-half mile of these three areas.

The Draft ADU Ordinance addresses parking requirements and the location of the parking space in order to be in conformance with ADU law. The City’s existing ordinance does not restrict parking for an ADU to one parking space and restricts property owners to locate these spaces behind the front setback line. The Draft ADU Ordinance is written to only requiring a maximum of one space for an ADU, and allows parking within the front setback, except the non-driveway front yard setback for compliance with the Statute.

The Planning Commission may consider interpreting “public transit” more broadly, such that some or all Omnitrans bus stops qualify for the Statutory parking exemption. In conjunction, the Planning Commission may consider limiting the number of tandem spaces to two or three cars total. Some cities have adopted an ADU Ordinance with a three car limitation.

Summary

Many other considerations pertain to ADUs. The scope of this study session is intended to not only focus on key policy issues discussed in this report but the other development standards that are contained in the Draft ADU Ordinance. Staff developed the Draft ADU Ordinance to help the Commission address the many policy issues described herein and other standards in ADU law. Following the study session, it is staff’s intent to refine the Draft ADU Ordinance based on policy direction from the Planning Commission, and bring the Draft Ordinance back at another study session to

review the suggested changes, as well as bring back any additional data or information that the Commission requests to further address specific policy issues or development standards. Staff intends to also publish a display ad in the paper for the second study session to enable the public to provide input to the Commission on a more refined Draft ADU Ordinance. The Planning Commission, along with the community, will be provided ample time to consider the Draft ADU Ordinance, prior to staff beginning the Code Amendment process and public hearings before the Planning Commission and the City Council.

ATTACHMENTS:

- Exhibit 1: Draft New ADU Ordinance
- Exhibit 2: Existing Second Dwelling Unit Ordinance – Chapter 17.37
- Exhibit 3: Chart comparing the City’s existing ADU Ordinance with changes in State law.
- Exhibit 4: California Department of Housing and Community Development Accessory Dwelling Unit Memorandum, dated December 2016)
- Exhibit 5: Memorandum from HCD on SB 229 and AB 494, dated May 2018

Chapter 17.37 SECONDARY DWELLING UNITS

Sections:

17.37.010	Purpose
17.37.020	Applicability
17.37.030	Authority
17.37.040	Design and Performance Standards
17.37.050	Covenant

17.37.010 Purpose

This chapter is intended to implement state law (California Government Code Section 65852.2) by permitting secondary dwelling units, while protecting the community's quality of life and preventing the adverse effects of overcrowding.

17.37.020 Applicability

- A. This chapter shall apply to applications for secondary dwelling units, as defined in Part 7 (Definitions).
- B. In the event of any inconsistency between regulations in this chapter and those outside of this chapter, the provisions of this chapter shall govern.

17.37.030 Authority

- A. The review authority for secondary dwelling units shall depend on the permit required by the zone in which the secondary dwelling unit is proposed, as provided in Part 2 (Zoning Districts, Land Uses, and Development Standards). Refer to Part 5 (Land Use and Development Approval Procedure) of the Zoning Ordinance for permit application procedures.
- B. The review authority shall be guided by the provisions of this chapter when reviewing a secondary dwelling unit application, in addition to the standards of the zone in which the secondary dwelling unit project is proposed.

17.37.040 Design and Performance Standards

- A. Nothing in this chapter shall be construed to prohibit the construction of an efficiency unit as described in Government Code Section 65852.2.
- B. **Site Criteria**
 - 1. A secondary dwelling unit shall only be located on a parcel that is free of any nuisance conditions.
 - 2. A secondary dwelling unit shall only be permitted on sites that are a minimum of 10,000 square feet and shall be limited to one per parcel.

3. The property owner(s) shall occupy either the primary or secondary dwelling unit as their principle residence. This requirement shall be included in a covenant signed by the property owner, Development Services Director and City Attorney and recorded on the property.

C. General Criteria. A secondary dwelling unit shall:

1. Not result in excessive noise, traffic, or parking congestion.
2. Be compatible with the primary dwelling unit and its surrounding environment with respect to height, scale, and massing.
3. Match the primary dwelling unit in architectural design, including but not limited to, building material, roofing, color, and finishing.
4. Provide adequate open space and landscaping useful for privacy and screening of adjacent properties.
5. Provide a private entrance, separate from the primary dwelling unit.
6. Maintain natural resources and minimize alteration of natural land forms to the extent feasible.
7. Include a complete kitchen, sleeping quarters, and a full bathroom.

D. Height. A secondary dwelling unit shall not exceed the height limit of the primary dwelling unit.

E. Setbacks.

1. An attached secondary dwelling unit shall comply with the setbacks provided for the primary dwelling unit.
2. A single-story, detached secondary dwelling unit shall:
 - a. Comply with the front yard setback requirement for the zone in which the lot is located.
 - b. Establish a minimum 5-foot side and rear yard setback.
 - c. Be at least 15 feet from the primary dwelling unit.
 - d. Be at least 8 feet from an accessory building or structure.
3. A non-single story, detached secondary dwelling unit shall:
 - a. Follow the requirements provided for a single-story, detached secondary dwelling unit.
 - b. In addition to the minimum setback requirement, provide an additional 1-foot setback for every foot over 15 feet of height.
4. Detached and attached units shall be located to the side or rear of the primary residence, and major access stairs, decks, entry doors, and major windows shall face the interior of the lot, or an alley if applicable.

F. Parking.

1. A secondary dwelling unit shall provide at least one off-street parking space.
2. No more than two parking spaces shall be allowed for any secondary dwelling.
3. Parking shall be located behind the front setback line provided for the primary dwelling unit.

- G. Unit Size.** The floor area for a secondary dwelling unit shall not exceed 50 percent of the primary dwelling unit's total floor area, or 1,200 square feet, whichever is less.

17.37.050 Covenant

- A.** Prior to obtaining a building permit, the property owners(s) of the proposed secondary dwelling unit shall submit to the Development Services Department a signed and notarized covenant on a form prescribed by the Development Services Director and approved by the City Attorney, together with applicable recording fees.
- B.** The property owner(s) shall file the covenant with the San Bernardino County Recorder's office. The covenant shall place future buyers on notice that the secondary dwelling unit:
1. Is restricted to the approved size;
 2. Is limited to the parking requirements set forth in Section 17.37.040(F);
 3. May be rented so long as the property owner(s) occupy the primary dwelling unit as their principle residence;
 4. Cannot be sold separately from the primary dwelling unit; and
 5. Lapses all the deed restrictions upon removal.

City Provision	Description	Compliant with GC 65852.2?	Notes
17.04.020 Land Use Regulations for Residential Zones	Table 17.04-1 provides permits secondary dwelling units in all residential zones subject to the following reg: "A secondary dwelling unit shall only be permitted on lots with an area greater than 10,000 square feet. Secondary dwelling units on a historic site or detached secondary units that exceed the height of the primary dwelling shall require an Admin Use Permit"	OK	GC 65852.2(a)(1)(A) provides that cities may designate areas within its jx'n where ADUs may be permitted. The designation may be based on criteria that may include (but are not limited to) the adequacy of water and sewer services and the impact of ADUs on traffic flow and public safety.
17.05.020 Land Use Regulations for Mixed-Use Zones	Table 17.05-1 provides permits secondary dwelling units in the following mixed use zone only: B/R-MU, subject to the following reg: A secondary dwelling unit shall only be permitted on lots with an area greater than 10,000 square feet. Secondary dwelling units on a historic site or detached secondary units that exceed the height of the primary dwelling shall require an AUP.	OK	See above
17.06.020 Land Use Regulations for Commercial Zones	Table 17.06-01 provides that secondary dwelling units are <u>not</u> permitted in any commercial zone	OK	See above
17.07.020 Land Use Regulations for Industrial Zones	Table 17.07-01 provides that secondary dwelling units are <u>not</u> permitted in any industrial zone	OK	See above
17.08.020 Land Use Regulations for Special Purpose Zones	Table 17.08-01 provides that secondary dwelling units are <u>not</u> permitted in any special purpose zone	OK	See above
17.44.050 Administrative Use Permits	generally provides review criteria for the Development Services Director and allows for referral to the Planning Commission	No if review is discretionary	In many cases, the state statute requires ministerial approval of ADU applications (see e.g. 65852.2(e) Even for other scenarios, Section 65852.2(a)(4) requires ministerial approval

City Provision	Description	Compliant with GC 65852.2?	Notes
Other provisions of Chapter 17.44			See above
Chapter 17.19 Accessory Uses and Structures	<p>17.19.020A provides that its standards apply to accessory uses within all zones as defined in Part 7 (Definitions)</p> <p>Part 7 provides: “Accessory Structure or Use” means any use and/or structure that is customarily a part of, and clearly incidental and secondary to a residence, and does not change the character of the use. Accessory structures include, but are not limited to, guest houses, storage sheds, spas, swimming pools, detached garages/carports, covered patios, etc.</p>	Not if the City requires compliance with certain provisions in Ch. 17.19	<p>17.19.030.B Timing: An accessory use or structure shall be constructed or otherwise established at the same time as or after the primary use or structure.</p> <p>- this would not comply with the state legislation</p> <p>-consider revising to state” Other than approved ADUs/second dwelling units governed by chapter 17.37...</p> <p>-the fact that 17.19.030.D has language excluding second dwelling units from that particular regulation, it appears that Chapter 17.37 generally does apply to secondary dwelling units</p> <p>-alternately locate the language excluding secondary dwelling units from chapter 17.19 in 17.19.020A</p>
17.37.010 Purpose	This chapter is intended to implement state law (California Government Code Section 65852.2) by permitting secondary dwelling units, while protecting the community’s quality of life and preventing the adverse effects of overcrowding.	No, different terminology	SB 1069 began referring to “accessory dwelling units” instead of “secondary dwelling units”
17.37.020 Applicability	A. This chapter shall apply to applications for secondary dwelling units, as defined in Part 7 (Definitions)		<p>See above note. In addition, Part 7 of the Upland Code the following definitions:</p> <p>“Accessory Structure or Use” means any use and/or structure that is customarily a part of, and clearly incidental and secondary to a residence, and does not change the character of the use. Accessory structures include, but are not limited to, guest houses, storage sheds, spas, swimming pools, detached garages/carports, covered patios, etc.</p> <p>“Guest House” means living quarters, excluding a second dwelling unit, within an accessory building located on the same lot with a main dwelling, and which includes living and sleeping facilities designed and intended to be</p>

City Provision	Description	Compliant with GC 65852.2?	Notes
			<p>used solely for the purposes of living and sleeping, and having no kitchen.”</p> <p>“Secondary Dwelling Unit” means an additional dwelling unit established in conjunction with a single-family dwelling on the same lot. A secondary dwelling unit shall include a kitchen, sleeping and full bathroom facilities with a permanent foundation.</p> <p>“Attached Secondary Dwelling Unit” means secondary dwelling units attached to or above the main dwelling unit on the lot.</p> <p>“Detached Secondary Dwelling Unit” means secondary dwelling units located in a structure separate from the primary dwelling unit. Detached secondary dwelling units are located on the same lot as the primary structure and may be attached to another legal accessory structure such as a garage.</p> <p>“Secondary Structure/Use” means a subordinate structure or use customarily incidental to and located on the same lot as the principal use.</p>
17.37.020 Applicability	B. In the event of any inconsistency between regulations in this chapter and those outside of this chapter, the provisions of this chapter shall govern.	N/A	
17.37.030 Authority	A. The review authority for secondary dwelling units shall depend on the permit required by the zone in which the secondary dwelling unit is proposed, as provided in Part 2 (Zoning Districts, Land Uses, and Development Standards). Refer to Part 5 (Land Use and Development Approval Procedure) of the Zoning Ordinance for permit application procedures.	No if review is discretionary	<p>In many cases, the state statute requires ministerial approval of ADU applications (see e.g. 65852.2(e))</p> <p>Even for other scenarios, Section 65852.2(a)(4) requires ministerial approval</p>
17.37.030 Authority	B. The review authority shall be guided by the provisions of this chapter when reviewing a secondary	No if review is discretionary	<p>In many cases, the state statute requires ministerial approval of ADU applications (see e.g. 65852.2(e))</p>

City Provision	Description	Compliant with GC 65852.2?	Notes
	dwelling unit application, in addition to the standards of the zone in which the secondary dwelling unit project is proposed.		Even for other scenarios, Section 65852.2(a)(4) requires ministerial approval
17.37.040A	Nothing in this chapter shall be construed to prohibit the construction of an efficiency unit as described in Government Code Section 65852.2	Yes	Current 65852.2(c) provides: A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the proposed or existing primary dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.
17.37.040B Site Criteria	1. A secondary dwelling unit shall only be located on a parcel that is free of any nuisance conditions.		
17.37.040B Site Criteria	2. A secondary dwelling unit shall only be permitted on sites that are a minimum of 10,000 square feet and shall be limited to one per parcel.	No	
17.37.040B Site Criteria	3. The property owner(s) shall occupy either the primary or secondary dwelling unit as their principle residence. This requirement shall be included in a covenant signed by the property owner, Development Services Director and City Attorney and recorded on the property.		GC 65852.2(e) allows cities to require owner occupancy for either the primary or the accessory dwelling unit (even in cases where the State requires ministerial approval. Please note that UMC 17.347.040B.3 provides that the property owner shall occupy <u>either</u> the primary or secondary dwelling unit as their principle residence. But, UMC 17.37.050.B.3 requires property owners to enter into a covenant whereby they promise to reside in the <u>primary</u> dwelling unit.

City Provision	Description	Compliant with GC 65852.2?	Notes
17.37.040C General Criteria	1. A secondary dwelling unit shall: Not result in excessive noise, traffic, or parking congestion.	OK	
17.37.040C General Criteria	2. A secondary dwelling unit shall: A secondary dwelling unit shall: Be compatible with the primary dwelling unit and its surrounding environment with respect to height, scale, and massing.		See notes about height and other standards below
17.37.040C General Criteria	3. A secondary dwelling unit shall: Match the primary dwelling unit in architectural design, including but not limited to, building material, roofing, color, and finishing.	OK	
17.37.040C General Criteria	4. A secondary dwelling unit shall: Provide adequate open space and landscaping useful for privacy and screening of adjacent properties.	OK	
17.37.040C General Criteria	5. A secondary dwelling unit shall: Provide a private entrance, separate from the primary dwelling unit.	OK	
17.37.040C General Criteria	6. A secondary dwelling unit shall: Maintain natural resources and minimize alteration of natural land forms to the extent feasible.	OK	
17.37.040C General Criteria	7. A secondary dwelling unit shall: Include a complete kitchen, sleeping quarters, and a full bathroom.	OK	
17.37.040D Height	Height. A secondary dwelling unit shall not exceed the height limit of the primary dwelling unit.	OK	Unless the application meets the standards of 65852.2(e)
17.37.040E Setbacks	1. An attached secondary dwelling unit shall comply with the setbacks provided for the primary dwelling unit.	No in some cases	Please be aware of particular provisions of GC 65852.2 relating to setback requirements: GC 65852.2(a)(1)(D)(vii) - no setback required for existing garage converted to an ADU or to a portion of an ADU, and a setback of no more than five feet from the side and rear lot lines shall be

City Provision	Description	Compliant with GC 65852.2?	Notes
			<p>required for an ADU constructed above a garage</p> <p>May also be inapplicable if application meets the standards of 65852.2(e)</p>
17.37.040E Setbacks	<p>2. A single-story, detached secondary dwelling unit shall:</p> <p>a. Comply with the front yard setback requirement for the zone in which the lot is located.</p> <p>b. Establish a minimum 5-foot side and rear yard setback.</p> <p>c. Be at least 15 feet from the primary dwelling unit.</p> <p>d. Be at least 8 feet from an accessory building or structure.</p>	No in some cases	<p>Please be aware of particular provisions of GC 65852.2 relating to setback requirements:</p> <p>GC 65852.2(a)(1)(D)(vii) - no setback required for existing garage converted to an ADU or to a portion of an ADU, and a setback of no more than five feet from the side and rear lot lines shall be required for an ADU constructed above a garage</p> <p>May also be inapplicable if application meets the standards of 65852.2(e)</p>
17.37.040E Setbacks	<p>3. A non-single story, detached secondary dwelling unit shall:</p> <p>a. Follow the requirements provided for a single-story, detached secondary dwelling unit.</p> <p>b. In addition to the minimum setback requirement, provide an additional 1-foot setback for every foot over 15 feet of height.</p>	No in some cases	<p>Please be aware of particular provisions of GC 65852.2 relating to setback requirements:</p> <p>GC 65852.2(a)(1)(D)(vii) - no setback required for existing garage converted to an ADU or to a portion of an ADU, and a setback of no more than five feet from the side and rear lot lines shall be required for an ADU constructed above a garage</p>
17.37.040E Setbacks	<p>4. Detached and attached units shall be located to the side or rear of the primary residence, and major access stairs, decks, entry doors, and major windows shall face the interior of the lot, or an alley if applicable.</p>	OK	
17.37.040F Parking	<p>1. A secondary dwelling unit shall provide at least one off-street parking space.</p>	No	<p>GC 65852.2(d) provides that <u>no</u> parking standards for an ADU are permitted in the following scenarios:</p> <ul style="list-style-type: none"> • ADU is located within ½ mile of public transit • ADU is located within an architecturally and historically significant historic district

City Provision	Description	Compliant with GC 65852.2?	Notes
			<ul style="list-style-type: none"> • ADU is part of the proposed or existing primary residence or an accessory structure • When on-street parking permits are required but not offered to the occupant of an ADU • When there is a car share vehicle located within 1 block of the ADU <p>Staff should review what areas of the city are impacted by this no-parking rule.</p> <p>In remaining cases, GC 65852.2(a)(1)(D)(x)(I) generally provides that parking requirements for ADUs shall not exceed 1 parking space per unit, or bedroom, whichever is less. The spaces may be provided as tandem parking on a driveway. In addition (x)(II) requires cities to permit parking in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas/tandem parking is not feasible based on specific site or regional topographical or fire and life safety reasons.</p> <p>Next, (xi) provides that when a garage, carport, or covered parking structure is demolished in conjunction with construction of an ADU, and the local agency requires the offstreet parking spaces to be replaced, the replacement spaces may be satisfied by covered spaces, uncovered, spaces, tandem spaces, or auto lift. Note that the City may not require replacement parking for ADUs that fit the criteria of (d) described above.</p> <p>Finally (and we should discuss this subsection on its own later) 65852.2(e) requires ministerial approval for applications for <u>existing</u> structures that</p>

City Provision	Description	Compliant with GC 65852.2?	Notes
			meet certain requirements, notwithstanding any earlier requirements in 65852.2(a)-(d) [the bulk of the state statute]
17.37.040F Parking	2. No more than two parking spaces shall be allowed for any secondary dwelling.	OK	What is the purpose of this limitation?
17.37.040F Parking	3. Parking shall be located behind the front setback line provided for the primary dwelling unit.	OK	Should be prepared to justify per the above re: off-street parking space requirement comment.
17.37.040	G. Unit Size. The floor area for a secondary dwelling unit shall not exceed 50 percent of the primary dwelling unit's total floor area, or 1,200 square feet, whichever is less.	Partially	<p>This matches GC 65852.2 (a)(1)(D)(iv), which provides a size standard for <u>attached</u> ADUs.</p> <p>(v) provides that <u>detached</u> ADUs shall not exceed 1,200 square feet (without the 50% option).</p> <p>Note that several cities have been using cities' general authority provided by GC 65852.2(a)(1)(B) and GC 65852.2(c) to deviate from the above standards. Those sections provide authority to impose standards on ADUs, including maximum size of a unit. However, you should know that at an L.A. Superior Court judge ruled that cities may not impose maximum unit sizes smaller than that provided under (D)(iv) and (v). The ruling is not binding on the City, but may be an indicator of future court rulings. Whether to deviate from the above standards would have to be a decision weighed in light of this risk.</p>
17.37.050	A. Prior to obtaining a building permit, the property owner(s) of the proposed secondary dwelling unit shall submit to the Development Services Department a signed and notarized covenant on a form prescribed by the Development Services Director and approved by the City Attorney, together with applicable recording fees.	OK	But note internal conflict within the Code: UMC 17.347.040B.3 provides that the property owner shall occupy <u>either</u> the primary or secondary dwelling unit as their principle residence. But, UMC 17.37.050.B.3 requires property owners to enter into a covenant whereby they promise to reside in the <u>primary</u> dwelling unit.

City Provision	Description	Compliant with GC 65852.2?	Notes
	<p>B. The property owner(s) shall file the covenant with the San Bernardino County Recorder’s office. The covenant shall place future buyers on notice that the secondary dwelling unit:</p> <ol style="list-style-type: none"> 1. Is restricted to the approved size; 2. Is limited to the parking requirements set forth in Section 17.37.040(F); 3. May be rented so long as the property owner(s) occupy the primary dwelling unit as their principle residence; 4. Cannot be sold separately from the primary dwelling unit; and 5. Lapses all the deed restrictions upon removal. 		



California Department of Housing and Community Development
Where Foundations Begin

Accessory Dwelling Unit Memorandum

December 2018



Table of Contents

Understanding ADUs and Their Importance	1
Summary of Recent Changes to Accessory Dwelling Unit Laws	3
Frequently Asked Questions: Accessory Dwelling Units	7
Should an Ordinance Encourage the Development of ADUs?	7
Are Existing Ordinances Null and Void?	7
Are Local Governments Required to Adopt an Ordinance?.....	8
Can a Local Government Preclude ADUs?	8
Can a Local Government Apply Development Standards and Designate Areas?	8
Can a Local Government Adopt Less Restrictive Requirements?.....	9
Can Local Governments Establish Minimum and Maximum Unit Sizes?	9
Can ADUs Exceed General Plan and Zoning Densities?	10
How Are Fees Charged to ADUs?	11
What Utility Fee Requirements Apply to ADUs.....	11
What Utility Fee Requirements Apply to Non-City and County Service Districts?	11
Do Utility Fee Requirements Apply to ADUs within Existing Space?.....	11
Does “Public Transit” Include within One-half Mile of a Bus Stop and Train Station?	11
Can Parking Be Required Where a Car Share is Available?	12
Is Off Street Parking Permitted in Setback Areas or through Tandem Parking?	12
Is Covered Parking Required?.....	12
Is Replacement Parking Required When the Parking Area for the Primary Structure is Used for an ADU?	12
Are Setbacks Required When an Existing Garage is Converted to an ADU?	12
Are ADUs Permitted in Existing Residence and Accessory Space?	13
Are Owner Occupants Required?	13
Are Fire Sprinklers Required for ADUs?	13
Is Manufactured Housing Permitted as an ADU?	14
Can an Efficiency Unit Be Smaller than 220 Square Feet?	14
Does ADU Law Apply to Charter Cities and Counties?	14
Do ADUs Count toward the Regional Housing Need Allocation.....	14
Must Ordinances Be Submitted to the Department of Housing and Community Development?	15

Frequently Asked Questions: Junior Accessory Dwelling Units	16
Is There a Difference between ADU and JADU?	16
Why Adopt a JADU Ordinance?	17
Can JADUs Count towards The RHNA?	17
Can the JADU Be Sold Independent of the Primary Dwelling?	17
Are JADUs Subject to Connection and Capacity Fees?	17
Are There Requirements for Fire Separation and Fire Sprinklers?	18
Resources	19
Attachment 1: Statutory Changes (Strikeout/Underline)	19
Attachment 2: Sample ADU Ordinance	25
Attachment 3: Sample JADU Ordinance	28
Attachment 4: State Standards Checklist	31
Attachment 5: Bibliography	32

Understanding Accessory Dwelling Units and Their Importance



California's housing production is not keeping pace with demand. In the last decade less than half of the needed housing was built. This lack of housing is impacting affordability with average housing costs in California exceeding the rest of the nation. As affordability becomes more problematic, people drive longer distances between a home that is affordable and where they work, or double up to share space, both of which reduces quality of life and produces negative environmental impacts.

Beyond traditional market-rate construction and government subsidized production and preservation there are alternative housing models and emerging trends that can contribute to addressing home supply and affordability in California.

One such example gaining popularity are Accessory Dwelling Units (ADUs) (also referred to as second units, in-law units, or granny flats).

What is an ADU

An ADU is a secondary dwelling unit with complete independent living facilities for one or more persons and generally takes three forms:

- *Detached*: The unit is separated from the primary structure
- *Attached*: The unit is attached to the primary structure
- *Repurposed Existing Space*: Space (e.g., master bedroom) within the primary residence is converted into an independent living unit
- *Junior Accessory Dwelling Units*: Similar to repurposed space with various streamlining measures

ADUs offer benefits that address common development barriers such as affordability and environmental quality. ADUs are an affordable type of home to construct in California because they do not require paying for land, major new infrastructure, structured parking, or elevators. ADUs are built with cost-effective one- or two-story wood frame construction, which is significantly less costly than homes in new multifamily infill buildings. ADUs can provide as much living space as the new apartments and condominiums being built in new infill buildings and serve very well for couples, small families, friends, young people, and seniors.

ADUs are a different form of housing that can help California meet its diverse housing needs. Young professionals and students desire to live in areas close to jobs, amenities, and schools. The problem with high-opportunity areas is that space is limited. There is a shortage of affordable units and the units that are available can be out of reach for many people. To address the needs of individuals or small families seeking living quarters in high opportunity areas, homeowners can construct an ADU on their lot or convert an underutilized part of their home like a garage

into a junior ADU. This flexibility benefits not just people renting the space, but the homeowner as well, who can receive an extra monthly rent income.

ADUs give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place as they require more care and helping extended families to be near one another while maintaining privacy.

Relaxed regulations and the cost to build an ADU make it a very feasible affordable housing option. A UC Berkeley study noted that one unit of affordable housing in the Bay Area costs about \$500,000 to develop whereas an ADU can range anywhere up to \$200,000 on the expensive end in high housing cost areas.

ADUs are a critical form of infill-development that can be affordable and offer important housing choices within existing neighborhoods. ADUs are a powerful type of housing unit because they allow for different uses, and serve different populations ranging from students and young professionals to young families, people with disabilities and senior citizens. By design, ADUs are more affordable and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education and services for many Californians.

Summary of Recent Changes to ADU Laws



The California legislature found and declared that, among other things, allowing accessory dwelling units (ADUs) in zones allowing single family and multifamily use provides additional rental housing and are an essential component in addressing housing needs in California. Over the years, ADU law has been revised to improve its effectiveness such as recent changes in 2003 to require ministerial approval. In 2017, changes to ADU laws will further reduce barriers, better streamline approval and expand capacity to accommodate the development of ADUs.

ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing options for family members, friends, students, the

elderly, in-home health care providers, the disabled, and others. Further, ADUs offer an opportunity to maximize and integrate housing choices within existing neighborhoods.

Within this context, the Department has prepared this guidance to assist local governments in encouraging the development of ADUs. Please see Attachment 1 for the complete statutory changes. The following is a brief summary of the changes for each bill.

SB 1069 (Wieckowski)

S.B. 1069 (Chapter 720, Statutes of 2016) made several changes to address barriers to the development of ADUs and expanded capacity for their development. The following is a brief summary of provisions that go into effect January 1, 2017.

Parking

SB 1069 reduces parking requirements to one space per bedroom or unit. The legislation authorizes off street parking to be tandem or in setback areas unless specific findings such as fire and life safety conditions are made. SB 1069 also prohibits parking requirements if the ADU meets any of the following:

- Is within a half mile from public transit.
- Is within an architecturally and historically significant historic district.
- Is part of an existing primary residence or an existing accessory structure.
- Is in an area where on-street parking permits are required, but not offered to the occupant of the ADU.
- Is located within one block of a car share area.

Fees

SB 1069 provides that ADUs shall not be considered new residential uses for the purpose of calculating utility connection fees or capacity charges, including water and sewer service. The bill prohibits a local agency from requiring an ADU applicant to install a new or separate utility connection or impose a related connection fee or capacity charge for ADUs that are contained within an existing residence or accessory structure. For attached and detached ADUs, this fee or charge must be proportionate to the burden of the unit on the water or sewer system and may not exceed the reasonable cost of providing the service.

Fire Requirements

SB 1069 provides that fire sprinklers shall not be required in an accessory unit if they are not required in the primary residence.

ADUs within Existing Space

Local governments must ministerially approve an application to create within a single family residential zone one ADU per single family lot if the unit is:

- contained within an existing residence or accessory structure.
- has independent exterior access from the existing residence.
- has side and rear setbacks that are sufficient for fire safety.

These provisions apply within all single family residential zones and ADUs within existing space must be allowed in all of these zones. No additional parking or other development standards can be applied except for building code requirements.

No Total Prohibition

SB 1069 prohibits a local government from adopting an ordinance that precludes ADUs.

AB 2299 (Bloom)

Generally, AB 2299 (Chapter 735, Statutes of 2016) requires a local government (beginning January 1, 2017) to ministerially approve ADUs if the unit complies with certain parking requirements, the maximum allowable size of an attached ADU, and setback requirements, as follows:

- The unit is not intended for sale separate from the primary residence and may be rented.
- The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.
- The unit is either attached to an existing dwelling or located within the living area of the existing dwelling or detached and on the same lot.
- The increased floor area of the unit does not exceed 50% of the existing living area, with a maximum increase in floor area of 1,200 square feet.
- The total area of floorspace for a detached accessory dwelling unit does not exceed 1,200 square feet.
- No passageway can be required.
- No setback can be required from an existing garage that is converted to an ADU.

- Compliance with local building code requirements.
- Approval by the local health officer where private sewage disposal system is being used.

Impact on Existing Accessory Dwelling Unit Ordinances

AB 2299 provides that any existing ADU ordinance that does not meet the bill's requirements is null and void upon the date the bill becomes effective. In such cases, a jurisdiction must approve accessory dwelling units based on Government Code Section 65852.2 until the jurisdiction adopts a compliant ordinance.

AB 2406 (Thurmond)

AB 2406 (Chapter 755, Statutes of 2016) creates more flexibility for housing options by authorizing local governments to permit junior accessory dwelling units (JADU) through an ordinance. The bill defines JADUs to be a unit that cannot exceed 500 square feet and must be completely contained within the space of an existing residential structure. In addition, the bill requires specified components for a local JADU ordinance. Adoption of a JADU ordinance is optional.

Required Components

The ordinance authorized by AB 2406 must include the following requirements:

- Limit to one JADU per residential lot zoned for single-family residences with a single-family residence already built on the lot.
- The single-family residence in which the JADU is created or JADU must be occupied by the owner of the residence.
- The owner must record a deed restriction stating that the JADU cannot be sold separately from the single-family residence and restricting the JADU to the size limitations and other requirements of the JADU ordinance.
- The JADU must be located entirely within the existing structure of the single-family residence and JADU have its own separate entrance.
- The JADU must include an efficiency kitchen which includes a sink, cooking appliance, counter surface, and storage cabinets that meet minimum building code standards. No gas or 220V circuits are allowed.
- The JADU may share a bath with the primary residence or have its own bath.

Prohibited Components

This bill prohibits a local JADU ordinance from requiring:

- Additional parking as a condition to grant a permit.
- Applying additional water, sewer and power connection fees. No connections are needed as these utilities have already been accounted for in the original permit for the home.

Fire Safety Requirements

AB 2406 clarifies that a JADU is to be considered part of the single-family residence for the purposes of fire and life protections ordinances and regulations, such as sprinklers and smoke alarms. The bill also requires life and protection ordinances that affect single-family residences to be applied uniformly to all single-family residences, regardless of the presence of a JADU.

JADUs and the RHNA

As part of the housing element portion of their general plan, local governments are required to identify sites with appropriate zoning that will accommodate projected housing needs in their regional housing need allocation (RHNA) and report on their progress pursuant to Government Code Section 65400. To credit a JADU toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit which is fairly flexible. Local government count units as part of reporting to DOF. JADUs meet these definitions and this bill would allow cities and counties to earn credit toward meeting their RHNA allocations by permitting residents to create less costly accessory units. See additional discussion under JADU frequently asked questions.

Frequently Asked Questions: Accessory Dwelling Units

Should an Ordinance Encourage the Development of ADUs?

Yes, ADU law and recent changes intend to address barriers, streamline approval and expand potential capacity for ADUs recognizing their unique importance in addressing California's housing needs. The preparation, adoption, amendment and implementation of local ADU ordinances must be carried out consistent with Government Code Section 65852.150:

(a) The Legislature finds and declares all of the following:

(1) Accessory dwelling units are a valuable form of housing in California.

(2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.

(3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.

(4) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.

(5) California faces a severe housing crisis.

(6) The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.

(7) Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.

(8) Accessory dwelling units are, therefore, an essential component of California's housing supply.

(b) 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.

Are Existing Ordinances Null and Void?



Yes, any local ordinance adopted prior to January 1, 2017 that is not in compliance with the changes to ADU law will be null and void. Until an ordinance is adopted, local governments must apply “state standards” (See Attachment 4 for State Standards checklist). In the absence of a local ordinance complying with ADU law, local review must be limited to “state standards” and cannot include additional requirements such as those in an existing ordinance.

Are Local Governments Required to Adopt an Ordinance?

No, a local government **is not required** to adopt an ordinance. ADUs built within a jurisdiction that lacks a local ordinance must comply with state standards (See Attachment 4). Adopting an ordinance can occur through different forms such as a new ordinance, amendment to an existing ordinance, separate section or special regulations within the zoning code or integrated into the zoning code by district. However, the ordinance should be established legislatively through a public process and meeting and not through internal administrative actions such as memos or zoning interpretations.

Can a Local Government Preclude ADUs?

No local government cannot preclude ADUs.

Can a Local Government Apply Development Standards and Designate Areas?

Yes, local governments may apply development standards and may designate where ADUs are permitted (GC Sections 65852.2(a)(1)(A) and (B)). However, ADUs within existing structures must be allowed in all single family residential zones.

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. ADUs can be avoided or allowed through an ancillary and separate discretionary process in areas with health and safety risks such as high fire hazard areas. However, standards and allowable areas must not be designed or applied in a manner that burdens the development of ADUs and should maximize the potential for ADU development. Designating areas where ADUs are allowed should be approached primarily on health and safety issues including water, sewer, traffic flow and public safety. Utilizing approaches such as restrictive overlays, limiting ADUs to larger lot sizes, burdensome lot coverage and setbacks and particularly concentration or distance requirements (e.g., no less than 500 feet between ADUs) may unreasonably restrict the ability of the homeowners to create ADUs, contrary to the intent of the Legislature.

Requiring large minimum lot sizes and not allowing smaller lot sizes for ADUs can severely restrict their potential development. For example, large minimum lot sizes for ADUs may constrict capacity throughout most of the community. Minimum lot sizes cannot be applied to ADUs within existing structures and could be considered relative to health and safety concerns such as areas on septic systems. While larger lot sizes might be targeted for various reasons such as ease of compatibility, many tools are available (e.g., maximum unit size, maximum lot coverage, minimum setbacks, architectural and landscape requirements) that allows ADUs to fit well within the built environment.

Can a Local Government Adopt Less Restrictive Requirements?

Yes, ADU law is a minimum requirement and its purpose is to encourage the development of ADUs. Local governments can take a variety of actions beyond the statute that promote ADUs such as reductions in fees, less restrictive parking or unit sizes or amending general plan policies.

Santa Cruz has confronted a shortage of housing for many years, considering its growth in population from incoming students at UC Santa Cruz and its proximity to Silicon Valley. The city promoted the development of ADUs as critical infill-housing opportunity through various strategies such as creating a manual to promote ADUs. The manual showcases prototypes of ADUs and outlines city zoning laws and requirements to make it more convenient for homeowners to get information. The City found that homeowners will take time to develop an ADU only if information is easy to find, the process is simple, and there is sufficient guidance on what options they have in regards to design and planning.

The city set the minimum lot size requirement at 4,500 sq. ft. to develop an ADU in order to encourage more homes to build an ADU. This allowed for a majority of single-family homes in Santa Cruz to develop an ADU. For more information, see <http://www.cityofsantacruz.com/departments/planning-and-community-development/programs/accessory-dwelling-unit-development-program>.

Can Local Governments Establish Minimum and Maximum Unit Sizes?

Yes, a local government may establish minimum and maximum unit sizes (GC Section 65852.2(c)). However, like all development standards (e.g., height, lot coverage, lot size), unit sizes should not burden the development of ADUs. For example, setting a minimum unit size that substantially increases costs or a maximum unit size that unreasonably restricts opportunities would be inconsistent with the intent of the statute. Typical maximum unit sizes range from 800 square feet to 1,200 square feet. Minimum unit size must at least allow for an efficiency unit as defined in Health and Safety Code Section 17958.1.

ADU law requires local government approval if meeting various requirements (GC Section 65852.2(a)(1)(D)), including unit size requirements. Specifically, attached ADUs shall not exceed 50 percent of the existing living area or 1,200 square feet and detached ADUs shall not exceed 1,200 square feet. A local government may choose a maximum unit size less than 1,200 square feet as long as the requirement is not burdensome on the creation of ADUs.

Can ADUs Exceed General Plan and Zoning Densities?

An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Minimum lot sizes must not be doubled (e.g., 15,000 square feet) to account for an ADU. Further, local governments could elect to allow more than one ADU on a lot.

New developments can increase the total number of affordable units in their project plans by integrating ADUs. Aside from increasing the total number of affordable units, integrating ADUs also promotes housing choices within a development. One such example is the Cannery project in Davis, CA. The Cannery project includes 547 residential units with up to 60 integrated ADUs. ADUs within the Cannery blend in with surrounding architecture, maintaining compatibility with neighborhoods and enhancing community character. ADUs are constructed at the same time as the primary single-family unit to ensure the affordable rental unit is available in the housing supply concurrent with the availability of market rate housing.

How Are Fees Charged to ADUs?

All impact fees, including water, sewer, park and traffic fees must be charged in accordance with the Fee Mitigation Act, which requires fees to be proportional to the actual impact (e.g., significantly less than a single family home).

Fees on ADUs, must proportionately account for impact on services based on the size of the ADU or number of plumbing fixtures. For example, a 700 square foot new ADU with one bathroom that results in less landscaping should be charged much less than a 2,000 square foot home with three bathrooms and an entirely new landscaped parcel which must be irrigated. Fees for ADUs should be significantly less and should account for a lesser impact such as lower sewer or traffic impacts.

What Utility Fee Requirements Apply to ADUs?

Cities and counties cannot consider ADUs as new residential uses when calculating connection fees and capacity charges.

Where ADUs are being created within an existing structure (primary or accessory), the city or county cannot require a new or separate utility connections for the ADU and cannot charge any connection fee or capacity charge.

For other ADUs, a local agency may require separate utility connections between the primary dwelling and the ADU, but any connection fee or capacity charge must be proportionate to the impact of the ADU based on either its size or the number of plumbing fixtures.

What Utility Fee Requirements Apply to Non-City and County Service Districts?

All local agencies must charge impact fees in accordance with the Mitigation Fee Act (commencing with Government Code Section 66000), including in particular Section 66013, which requires the connection fees and capacity charges to be proportionate to the burden posed by the ADU. Special districts and non-city and county service districts must account for the lesser impact related to an ADU and should base fees on unit size or number of plumbing fixtures. Providers should consider a proportionate or sliding scale fee structures that address the smaller size and lesser impact of ADUs (e.g., fees per square foot or fees per fixture). Fee waivers or deferrals could be considered to better promote the development of ADUs.

Do Utility Fee Requirements Apply to ADUs within Existing Space?

No, where ADUs are being created within an existing structure (primary or accessory), new or separate utility connections and fees (connection and capacity) must not be required.

Does “Public Transit” Include within One-half Mile of a Bus Stop and Train Station?

Yes, “public transit” may include a bus stop, train station and paratransit if appropriate for the applicant. “Public transit” includes areas where transit is available and can be considered regardless of tighter headways (e.g., 15 minute intervals). Local governments could consider a broader definition of “public transit” such as distance to a bus route.

Can Parking Be Required Where a Car Share Is Available?

No, ADU law does not allow parking to be required when there is a car share located within a block of the ADU. A car share location includes a designated pick up and drop off location. Local governments can measure a block from a pick up and drop off location and can decide to adopt broader distance requirements such as two to three blocks.

Is Off Street Parking Permitted in Setback Areas or through Tandem Parking?

Yes, ADU law deliberately reduces parking requirements. Local governments may make specific findings that tandem parking and parking in setbacks are infeasible based on specific site, regional topographical or fire and life safety conditions or that tandem parking or parking in setbacks is not permitted anywhere else in the jurisdiction. However, these determinations should be applied in a manner that does not unnecessarily restrict the creation of ADUs.

Local governments must provide reasonable accommodation to persons with disabilities to promote equal access housing and comply with fair housing laws and housing element law. The reasonable accommodation procedure must provide exception to zoning and land use regulations which includes an ADU ordinance. Potential exceptions are not limited and may include development standards such as setbacks and parking requirements and permitted uses that further the housing opportunities of individuals with disabilities.

Is Covered Parking Required?

No, off street parking must be permitted through tandem parking on an existing driveway, unless specific findings are made.

Is Replacement Parking Required When the Parking Area for the Primary Structure Is Used for an ADU?

Yes, but only if the local government requires off-street parking to be replaced in which case flexible arrangements such as tandem, including existing driveways and uncovered parking are allowed. Local governments have an opportunity to be flexible and promote ADUs that are being created on existing parking space and can consider not requiring replacement parking.

Are Setbacks Required When an Existing Garage Is Converted to an ADU?

No, 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.

Also, when a garage, carport or covered parking structure is demolished or where the parking area ceases to exist so an ADU can be created, the replacement parking must be allowed in any “configuration” on the lot, “...including, but not limited to, covered spaces, uncovered spaces, or tandem spaces, or...” Configuration can be applied in a flexible manner to not burden the creation of ADUs. For example, spatial configurations like tandem on existing driveways in setback areas or not requiring excessive distances from the street would be appropriate.

Are ADUs Permitted in Existing Residence or Accessory Space?

Yes, ADUs located in single family residential zones and existing space of a single family residence or accessory structure must be approved regardless of zoning standards (Section 65852.2(a)(1)(B)) for ADUs, including locational requirements (Section 65852.2(a)(1)(A)), subject to usual non-appealable ministerial building permit requirements. For example, ADUs in existing space does not necessitate a zoning clearance and must not be limited to certain zones or areas or subject to height, lot size, lot coverage, unit size, architectural review, landscape or parking requirements. Simply, where a single family residence or accessory structure exists in any single family residential zone, so can an ADU. The purpose is to streamline and expand potential for ADUs where impact is minimal and the existing footprint is not being increased.

Zoning requirements are not a basis for denying a ministerial building permit for an ADU, including non-conforming lots or structures. The phrase, “within the existing space” includes areas within a primary home or within an attached or detached accessory structure such as a garage, a carriage house, a pool house, a rear yard studio and similar enclosed structures.

Are Owner Occupants Required?

No, however, a local government can require an applicant to be an owner occupant. The owner may reside in the primary or accessory structure. Local governments can also require the ADU to not be used for short term rentals (terms lesser than 30 days). Both owner occupant use and prohibition on short term rentals can be required on the same property. Local agencies which impose this requirement should require recordation of a deed restriction regarding owner occupancy to comply with GC Section 27281.5

Are Fire Sprinklers Required for ADUs?

Depends, ADUs shall not be required to provide fire sprinklers if they are not or were not required of the primary residence. However, sprinklers can be required for an ADU if required in the primary structure. For example, if the primary residence has sprinklers as a result of an existing ordinance, then sprinklers could be required in the ADU. Alternative methods for fire protection could be provided.

If the ADU is detached from the main structure or new space above a detached garage, applicants can be encouraged to contact the local fire jurisdiction for information regarding fire sprinklers. Since ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing options for family members, students, the elderly, in-home health care providers, the disabled, and others, the fire departments want to ensure the safety of these populations as well as the safety of those living in the primary structure. Fire Departments can help educate property owners on the benefits of sprinklers, potential resources and how they can be installed cost effectively. For example, insurance rates are typically 5 to 10 percent lower where the unit is sprinklered. Finally, other methods exist to provide additional fire protection. Some options may include additional exits, emergency escape and rescue openings, 1 hour or greater fire-rated assemblies, roofing materials and setbacks from property lines or other structures.

Is Manufactured Housing Permitted as an ADU?

Yes, an ADU is any residential dwelling unit with independent facilities and permanent provisions for living, sleeping, eating, cooking and sanitation. An ADU includes an efficiency unit (Health and Safety Code Section 17958.1) and a manufactured home (Health and Safety Code Section 18007).

Health and Safety Code Section 18007(a) “**Manufactured home,**” for the purposes of this part, means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. “Manufactured home” includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

Can an Efficiency Unit Be Smaller than 220 Square Feet?

Yes, an efficiency unit for occupancy by no more than two persons, by statute (Health and Safety Code Section 17958.1), can have a minimum floor area of 150 square feet and can also have partial kitchen or bathroom facilities, as specified by ordinance or can have the same meaning specified in the Uniform Building Code, referenced in the Title 24 of the California Code of Regulations.

The 2015 International Residential Code adopted by reference into the 2016 California Residential Code (CRC) allows residential dwelling units to be built considerably smaller than an Efficiency Dwelling Unit (EDU). Prior to this code change an EDU was required to have a minimum floor area not less than 220 sq. ft unless modified by local ordinance in accordance with the California Health and Safety Code which could allow an EDU to be built no less than 150 sq. ft. For more information, see HCD’s Information Bulletin at <http://www.hcd.ca.gov/codes/manufactured-housing/docs/ib2016-06.pdf> .

Does ADU Law Apply to Charter Cities and Counties?

Yes. ADU law explicitly applies to “local agencies” which are defined as a city, county, or city and county whether general law or chartered (Section 65852.2(i)(2)).

Do ADUs Count toward the Regional Housing Need Allocation?

Yes, local governments may report ADUs as progress toward Regional Housing Need Allocation pursuant to Government Code Section 65400 based on the actual or anticipated affordability. See below frequently asked questions for JADUs for additional discussion.

Must ADU Ordinances Be Submitted to the Department of Housing and Community Development?

Yes, ADU ordinances must be submitted to the State Department of Housing and Community Development within 60 days after adoption, including amendments to existing ordinances. However, upon submittal, the ordinance is not subject to a Department review and findings process similar to housing element law (GC Section 65585)

Frequently Asked Questions: Junior Accessory Dwelling Units

Is There a Difference between ADU and JADU?



Yes, AB 2406 added Government Code Section 65852.22, providing a unique option for Junior ADUs. The bill allows local governments to adopt ordinances for JADUs, which are no more than 500 square feet and are typically bedrooms in a single-family home that have an entrance into the unit from the main home and an entrance to the outside from the JADU. The JADU must have cooking facilities, including a sink, but is not required to have a private bathroom. Current law does not prohibit local governments from adopting an ordinance for a JADU, and this bill explicitly allows, not requires, a local agency to do so. If the ordinance requires a permit, the local agency shall not require additional parking or charge a fee for a water or sewer connection as a condition of granting a permit for a JADU. For more information, see below.

ADUs and JADUs

REQUIREMENTS	ADU	JADU
Maximum Unit Size	Yes, generally up to 1,200 Square Feet or 50% of living area	Yes, 500 Square Foot Maximum
Kitchen	Yes	Yes
Bathroom	Yes	No, Common Sanitation is Allowed
Separate Entrance	Depends	Yes
Parking	Depends, Parking May Be Eliminated and Cannot Be Required Under Specified Conditions	No, Parking Cannot Be Required
Owner Occupancy	Depends, Owner Occupancy <i>May</i> Be Required	Yes, Owner Occupancy Is Required
Ministerial Approval Process	Yes	Yes
Prohibition on Sale of ADU	Yes	Yes

Why Adopt a JADU Ordinance?

JADUs offer the simplest and most affordable housing option. They bridge the gap between a roommate and a tenant by offering an interior connection between the unit and main living area. The doors between the two spaces can be secured from both sides, allowing them to be easily privatized or incorporated back into the main living area. These units share central systems, require no fire separation, and have a basic kitchen, utilizing small plug in appliances, reducing development costs. This 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.

Can JADUs Count towards the RHNA?

Yes, as part of the housing element portion of their general plan, local governments are required to identify sites with appropriate zoning that will accommodate projected housing needs in their regional housing need allocation (RHNA) and report on their progress pursuant to Government Code Section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, a JADU, including with shared sanitation facilities, that meets the census definition and is reported to the Department of Finance as part of the DOF annual City and County Housing Unit Change Survey can be credited toward the RHNA based on the appropriate income level. Local governments can track actual or anticipated affordability to assure the JADU is counted to the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit application.

A housing unit is a house, an apartment, a mobile home or trailer, a group of rooms, or a single room that is occupied, or, if vacant, is intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live separately from any other persons in the building and which have direct access from the outside of the building or through a common hall.

Can the JADU Be Sold Independent of the Primary Dwelling?

No, the JADU cannot be sold separate from the primary dwelling.

Are JADUs Subject to Connection and Capacity Fees?

No, JADUs shall not be considered a separate or new dwelling unit for the purposes of fees and as a result should not be charged a fee for providing water, sewer or power, including a connection fee. These requirements apply to all providers of water, sewer and power, including non-municipal providers.

Local governments may adopt requirements for fees related to parking, other service or connection for water, sewer or power, however, these requirements must be uniform for all single family residences and JADUs are not considered a new or separate unit.

Are There Requirements for Fire Separation and Fire Sprinklers?

Yes, a local government may adopt requirements related to fire and life protection requirements. However, a JADU shall not be considered a new or separate unit. In other words, if the primary unit is not subject to fire or life protection requirements, then the JADU must be treated the same.

Resources



Attachment 1: Statutory Changes (Strikeout/Underline)

Government Code Section 65852.2

(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in ~~single-family and multifamily residential zones~~ *areas zoned to allow single-family or multifamily use*. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on ~~criteria~~ *criteria* that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit ~~is not intended for sale~~ *may be rented* separate from the primary ~~residence and~~ *residence, buy* ~~may be rented~~ *not be sold or otherwise conveyed separate from the primary residence*.

(ii) The lot is zoned ~~for~~ *to allow* single-family or multifamily use and ~~contains an existing~~ *includes a proposed or existing* single-family dwelling.

(iii) The accessory dwelling unit is either attached ~~to the existing dwelling~~ 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.

(iv) The ~~increased floor~~ *total* area of *floorspace of* an attached accessory dwelling unit shall not exceed 50 percent of the ~~existing living area, with a maximum increase in floor area of~~ *proposed or existing primary dwelling living area* or 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to ~~a~~ *an accessory dwelling unit or to a portion of an* accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per ~~bedroom~~ *bedroom, whichever is less*. These spaces may be provided as tandem parking on ~~an existing~~ *a* driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety ~~conditions, or that it is not permitted anywhere else in the jurisdiction~~ *conditions*.

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling *unit or converted to an accessory dwelling* unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that ~~contains an~~ *includes a proposed or* existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives ~~its first application on or after July 1, 1983,~~ *an application* for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall ~~accept the application and~~ approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the *proposed or* existing *primary* dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

- (1) The accessory dwelling unit is located within one-half mile of public transit.
- (2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) The accessory dwelling unit is part of the *proposed or* existing primary residence or an ~~existing~~ accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(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~~ *zone for single-family use* 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, *including, but not limited to, a studio, pool house, or other similar 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. *A city may require owner occupancy for either the primary or the accessory dwelling unit created through this process.*

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered ~~new residential uses by a local agency, special district, or water corporation to be a new residential use~~ for the purposes of calculating ~~local agency~~ connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (e), a local ~~agency~~ *agency, special district, or water corporation* shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (e), a local ~~agency~~ *agency, special district, or water corporation* may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) Local agencies shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. *The department may review and comment on this submitted ordinance.*

(i) As used in this section, the following terms mean:

(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

- (A) An efficiency unit, as defined in Section 17958.1 of *the* Health and Safety Code.
- (B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.
- (5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
- (6) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.*
- (j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

Government Code Section 65852.22.

(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence already built on the lot.

(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the existing walls of the structure, and require the inclusion of an existing bedroom.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the structure, with an interior entry to the main living area. A permitted junior accessory dwelling may include a second interior doorway for sound attenuation.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

(A) A sink with a maximum waste line diameter of 1.5 inches.

(B) A cooking facility with appliances that do not require electrical service greater than 120 volts, or natural or propane gas.

(C) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine whether the junior accessory dwelling unit is in compliance with applicable building standards.

(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. A permit shall be issued within 120 days of submission of an application for a permit pursuant to this section. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(d) For the purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(e) For the purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(g) For purposes of this section, the following terms have the following meanings:

(1) "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.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

Attachment 2: Sample ADU Ordinance

Section XXX1XXX: Purpose

This Chapter provides for accessory dwelling units on lots developed or proposed to be developed with single-family dwellings. Such accessory dwellings contribute needed housing to the community's housing stock. Thus, accessory dwelling units are a residential use which is consistent with the General Plan objectives and zoning regulations and which enhances housing opportunities, including near transit on single family lots.

Section XXX2XXX: Applicability

The provisions of this Chapter apply to all lots that are occupied with a single family dwelling unit and zoned residential. Accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and are a residential use that is consistent with the existing general plan and zoning designation for the lot.

Section XXX3XXX: Development Standards

Accessory Structures within Existing Space

An accessory dwelling unit within an existing space including the primary structure, attached or detached garage or other accessory structure shall be permitted ministerially with a building permit regardless of all other standards within the Chapter if complying with:

1. Building and safety codes
2. Independent exterior access from the existing residence
3. Sufficient side and rear setbacks for fire safety.

Accessory Structures (Attached and Detached)

General:

1. The unit is not intended for sale separate from the primary residence and may be rented.
2. The lot is zoned for residential and contains an existing, single-family dwelling.
3. The accessory dwelling unit is either attached to the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.
4. The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.
5. The total area of floor space for a detached accessory dwelling unit shall not exceed 1,200 square feet.
6. Local building code requirements that apply to detached dwellings, as appropriate.
7. No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
8. No setback shall be required for an existing garage that is converted to a accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.
9. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence and may employ alternative methods for fire protection.

Parking:

1. Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking, including on an existing driveway or in setback areas, excluding the non-driveway front yard setback.
2. Parking is not required in the following instances:
 - The accessory dwelling unit is located within one-half mile of public transit, including transit stations and bus stations.

- The accessory dwelling unit is located in the WWWW Downtown, XXX Area, YYY Corridor and ZZZ Opportunity Area.
 - The accessory dwelling unit is located within an architecturally and historically significant historic district.
 - When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
 - When there is a car share vehicle located within one block of the accessory dwelling unit.
3. Replacement Parking: When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an accessory dwelling unit, replacement parking shall not be required and may be located in any configuration on the same lot as the accessory dwelling unit.

Section XXX4XXX: Permit Requirements

ADUs shall be permitted ministerially, in compliance with this Chapter within 120 days of application. The Community Development Director shall issue a building permit or zoning certificate to establish an accessory dwelling unit in compliance with this Chapter if all applicable requirements are met in Section XXX3XXXXX, as appropriate. The Community Development Director may approve an accessory dwelling unit that is not in compliance with Section XXX3XXXXX as set forth in Section XXX5XXXX. The XXXX Health Officer shall approve an application in conformance with XXXXXX where a private sewage disposal system is being used.

Section XXX5XXX: Review Process for Accessory Structure Not Complying with Development Standards

An accessory dwelling unit that does not comply with standards in Section XXX3XX may be permitted with a zoning certificate or an administrative use permit at the discretion of the Community Development Director subject to findings in Section XXX6XX

Section XXX6XXX: Findings

A. In order to deny an administrative use permit under Section XXX5XXX, the Community Development Director shall find that the Accessory Dwelling Unit would be detrimental to the public health and safety or would introduce unreasonable privacy impacts to the immediate neighbors.

B. In order to approve an administrative use permit under Section XXX5XXX to waive required accessory dwelling unit parking, the Community Development Director shall find that additional or new on-site parking would be detrimental, and that granting the waiver will meet the purposes of this Chapter.

Section XXX7XXX: Definitions

(1) "Living area means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(3) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(4) (1) "Existing Structure" for the purposes of defining an allowable space that can be converted to an ADU means within the four walls and roofline of any structure existing on or after January 1, 2017 that can be made safely habitable under local building codes at the determination of the building official regardless of any non-compliance with zoning standards.

Attachment 3: Sample JADU Ordinance

Draft Junior Accessory Dwelling Units (JADU) – Flexible Housing

Findings:

1. Causation: Critical need for housing for lower income families and individuals given the high cost of living and low supply of affordable homes for rent or purchase, and the difficulty, given the current social and economic environment, in building more affordable housing
2. Mitigation: Create a simple and inexpensive permitting track for the development of junior accessory dwelling units that allows spare bedrooms in homes to serve as a flexible form of infill housing
3. Endangerment: Provisions currently required under agency ordinances are so arbitrary, excessive, or burdensome as to restrict the ability of homeowners to legally develop these units therefore encouraging homeowners to bypass safety standards and procedures that make the creation of these units a benefit to the whole of the community
4. Co-Benefits: Homeowners (particularly retired seniors and young families, groups that tend to have the lowest incomes) – generating extra revenue, allowing people facing unexpected financial obstacles to remain in their homes, housing parents, children or caregivers; Homebuyers - providing rental income which aids in mortgage qualification under new government guidelines; Renters – creating more low-cost housing options in the community where they work, go to school or have family, also reducing commute time and expenses; Municipalities – helping to meet RHNA goals, increasing property and sales tax revenue, insuring safety standard code compliance, providing an abundant source of affordable housing with no additional infrastructure needed; Community - housing vital workers, decreasing traffic, creating economic growth both in the remodeling sector and new customers for local businesses; Planet - reducing carbon emissions, using resources more efficiently;
5. Benefits of Junior ADUs: offer a more affordable housing option to both homeowners and renters, creating economically healthy, diverse, multi-generational communities;

Therefore, the following ordinance is hereby enacted:

This Section provides standards for the establishment of junior accessory dwelling units, an alternative to the standard accessory dwelling unit, permitted as set forth under State Law AB 1866 (Chapter 1062, Statutes of 2002) Sections 65852.150 and 65852.2 and subject to different provisions under fire safety codes based on the fact that junior accessory dwelling units do not qualify as “complete independent living facilities” given that the interior connection from the junior accessory dwelling unit to the main living area remains, therefore not redefining the single-family home status of the dwelling unit.

- A) *Development Standards.* Junior accessory dwelling units shall comply with the following standards, including the standards in Table below:
- 1) *Number of Units Allowed.* Only one accessory dwelling unit or, junior accessory dwelling unit, may be located on any residentially zoned lot that permits a single-family dwelling except as otherwise regulated or restricted by an adopted Master Plan or Precise Development Plan. A junior accessory dwelling unit may only be located on a lot which already contains one legal single-family dwelling.
 - 2) *Owner Occupancy:* The owner of a parcel proposed for a junior accessory dwelling unit shall occupy as a principal residence either the primary dwelling or the accessory dwelling, except when the home is held by an agency such as a land trust or housing organization in an effort to create affordable housing.
 - 3) *Sale Prohibited:* A junior accessory dwelling unit shall not be sold independently of the primary dwelling on the parcel.

- 4) *Deed Restriction:* A deed restriction shall be completed and recorded, in compliance with Section B below.
- 5) *Location of Junior Accessory Dwelling Unit:* A junior accessory dwelling unit must be created within the existing walls of an existing primary dwelling, and must include conversion of an existing bedroom.
- 6) *Separate Entry Required:* A separate exterior entry shall be provided to serve a junior accessory dwelling unit.
- 7) *Interior Entry Remains:* The interior connection to the main living area must be maintained, but a second door may be added for sound attenuation.
- 8) *Kitchen Requirements:* The junior accessory dwelling unit shall include an efficiency kitchen, requiring and limited to the following components:
 - a) A sink with a maximum waste line diameter of one-and-a-half (1.5) inches,
 - b) A cooking facility with appliance which do not require electrical service greater than one-hundred-and-twenty (120) volts or natural or propane gas, and
 - c) A food preparation counter and storage cabinets that are reasonable to size of the unit.
- 9) *Parking:* No additional parking is required beyond that required when the existing primary dwelling was constructed.

Development Standards for Junior Accessory Dwelling Units

SITE OR DESIGN FEATURE	SITE AND DESIGN STANDARDS
Maximum unit size	500 square feet
Setbacks	As required for the primary dwelling unit
Parking	No additional parking required

- B) *Deed Restriction:* Prior to obtaining a building permit for a junior accessory dwelling unit, a deed restriction, approved by the City Attorney, shall be recorded with the County Recorder's office, which shall include the pertinent restrictions and limitations of a junior accessory dwelling unit identified in this Section. Said deed restriction shall run with the land, and shall be binding upon any future owners, heirs, or assigns. A copy of the recorded deed restriction shall be filed with the Department stating that:
 - 1) The junior accessory dwelling unit shall not be sold separately from the primary dwelling unit;
 - 2) The junior accessory dwelling unit is restricted to the maximum size allowed per the development standards;
 - 3) The junior accessory dwelling unit shall be considered legal only so long as either the primary residence, or the accessory dwelling unit, is occupied by the owner of record of the property, except when the home is owned by an agency such as a land trust or housing organization in an effort to create affordable housing;
 - 4) The restrictions shall be binding upon any successor in ownership of the property and lack of compliance with this provision may result in legal action against the property owner, including revocation of any right to maintain a junior accessory dwelling unit on the property.
- C) *No Water Connection Fees:* No agency should require a water connection fee for the development of a junior accessory dwelling unit. An inspection fee to confirm that the dwelling unit complies with development standard may be assessed.

- D) *No Sewer Connection Fees*: No agency should require a sewer connection fee for the development of a junior accessory dwelling unit. An inspection fee to confirm that the dwelling unit complies with development standard may be assessed.
- E) *No Fire Sprinklers and Fire Attenuation*: No agency should require fire sprinkler or fire attenuation specifications for the development of a junior accessory dwelling unit. An inspection fee to confirm that the dwelling unit complies with development standard may be assessed.

Definitions of Specialized Terms and Phrases.

“Accessory dwelling unit” means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

- (1) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.
- (2) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

“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.

Attachment 4: State Standards Checklist (As of January 1, 2017)

YES/NO	STATE STANDARD*	GOVERNMENT CODE SECTION
	Unit is not intended for sale separate from the primary residence and may be rented.	65852.2(a)(1)(D)(i)
	Lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.	65852.2(a)(1)(D)(ii)
	Accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.	65852.2(a)(1)(D)(iii)
	Increased floor area of an attached accessory dwelling unit does not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.	65852.2(a)(1)(D)(iv)
	Total area of floor space for a detached accessory dwelling unit does not exceed 1,200 square feet.	65852.2(a)(1)(D)(v)
	Passageways are not required in conjunction with the construction of an accessory dwelling unit.	65852.2(a)(1)(D)(vi)
	Setbacks are not required for an existing garage that is converted to an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines are not required for an accessory dwelling unit that is constructed above a garage.	65852.2(a)(1)(D)(vii)
	(Local building code requirements that apply to detached dwellings are met, as appropriate.	65852.2(a)(1)(D)(viii)
	Local health officer approval where a private sewage disposal system is being used, if required.	65852.2(a)(1)(D)(ix)
	Parking requirements do not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.	65852.2(a)(1)(D)(x)

* Other requirements may apply. See Government Code Section 65852.2

Attachment 5: Bibliography

Reports

[ACCESSORY DWELLING UNITS: CASE STUDY](#) (26 pp.)

By United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities, and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

[THE MACRO VIEW ON MICRO UNITS](#) (46 pp.)

By Bill Whitlow, et al. – Urban Land Institute (2014)
Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013 to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

[RESPONDING TO CHANGING HOUSEHOLDS: Regulatory Challenges for Micro-units and Accessory Dwelling Units](#) (76 pp.)

By Vicki Been, Benjamin Gross, and John Infranca (2014)
New York University: Furman Center for Real Estate & Urban Policy
Library Call # D55 3 I47 2014

This White Paper fills two gaps in the discussion regarding compact units. First, we provide a detailed analysis of the regulatory and other challenges to developing both ADUs and micro-units, focusing on five cities: New York; Washington, DC; Austin; Denver; and Seattle. That analysis will be helpful not only to the specific jurisdictions we study, but also can serve as a model for those who want to catalogue regulations that might get in the way of the development of compact units in their own jurisdictions. Second, as more local governments permit or encourage compact units, researchers will need to evaluate how well the units built serve the goals proponents claim they will.

[SCALING UP SECONDARY UNIT PRODUCTION IN THE EAST BAY: Impacts and Policy Implications](#) (25 pp.)

By Jake Webmann, Alison Nemirow, and Karen Chapple (2012)
UC Berkeley: Institute of Urban and Regional Development (IURD)
Library Call # H44 1.1 S33 2012

This paper begins by analyzing how many secondary units of one particular type, detached backyard cottages, might be built in the East Bay, focusing on the Flatlands portions of Berkeley, El Cerrito, and Oakland. We then investigate the potential impacts of scaling up the strategy with regard to housing affordability, smart growth, alternative transportation, the economy, and city budgets. A final section details policy recommendations, focusing on regulatory reforms and other actions cities can take to encourage secondary unit construction, such as promoting carsharing programs, educating residents, and providing access to finance.

[SECONDARY UNITS AND URBAN INFILL: A literature Review \(12 pp.\)](#)

By Jake Wegmann and Alison Nemirow (2011)
UC Berkeley: IURD
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.

[YES, BUT WILL THEY LET US BUILD? The Feasibility of Secondary Units in the East Bay \(17 pp.\)](#)

By Alison Nemirow and Karen Chapple (2012)
UC Berkeley: IURD
Library Call # H44.5 1.1 Y47 2012

This paper begins with a discussion of how to determine the development potential for secondary units, and then provides an overview of how many secondary units can be built in the East Bay of San Francisco Bay Area under current regulations. The next two sections examine key regulatory barriers in detail for the five cities in the study (Albany, Berkeley, El Cerrito, Oakland, and Richmond), looking at lot size, setbacks, parking requirements, and procedural barriers. A sensitivity analysis then determines how many units could be built were the regulations to be relaxed.

[YES IN MY BACKYARD: Mobilizing the Market for Secondary Units \(20 pp.\)](#)

By Karen Chapple, J. Weigmann, A. Nemirow, and C. Dentel-Post (2011)
UC Berkeley: Center for Community Innovation.
Library Call # B92 1.1 Y47 2011

This study examines two puzzles that must be solved in order to scale up a secondary unit strategy: first, how can city regulations best enable their construction? And second, what is the market for secondary units? Because parking is such an important issue, we also examine the potential for secondary unit residents to rely on alternative transportation modes, particular car share programs. The study looks at five adjacent cities in the East Bay of the San Francisco Bay Area (Figure 1) -- Oakland, Berkeley, Albany, El Cerrito, and Richmond -- focusing on the areas within ½ mile of five Bay Area Rapid Transit (BART) stations.

Journal Articles and Working Papers:

[BACKYARD HOMES LA \(17 pp.\)](#)

By Dana Cuff, Tim Higgins, and Per-Johan Dahl, Eds. (2010)
Regents of the University of California, Los Angeles.
City Lab Project Book.

[DEVELOPING PRIVATE ACCESSORY DWELLINGS \(6 pp.\)](#)

By William P. Macht. Urbanland online. (June 26, 2015)
Library Location: Urbanland 74 (3/4) March/April 2015, pp. 154-161.

[GRANNY FLATS GAINING GROUND](#) (2 pp.)

By Brian Barth. Planning Magazine: pp. 16-17. (April 2016)
Library Location: Serials

["HIDDEN" DENSITY: THE POTENTIAL OF SMALL-SCALE INFILL DEVELOPMENT](#) (2 pp.)

By Karen Chapple (2011)
UC Berkeley: IURD Policy Brief.
Library Call # D44 1.2 H53 2011

California's implementation of SB 375, the Sustainable Communities and Climate Protection Act of 2008, is putting new pressure on communities to support infill development. As metropolitan planning organizations struggle to communicate the need for density, they should take note of strategies that make increasing density an attractive choice for neighborhoods and regions.

[HIDDEN DENSITY IN SINGLE-FAMILY NEIGHBORHOODS: Backyard cottages as an equitable smart growth strategy](#) (22 pp.)

By Jake Wegmann and Karen Chapple. Journal of Urbanism 7(3): pp. 307-329. (2014)

Abstract (not available in full text): Secondary units, or separate small dwellings embedded within single-family residential properties, constitute a frequently overlooked strategy for urban infill in high-cost metropolitan areas in the United States. This study, which is situated within California's San Francisco Bay Area, draws upon data collected from a homeowners' survey and a Rental Market Analysis to provide evidence that a scaled-up strategy emphasizing one type of secondary unit – the backyard cottage – could yield substantial infill growth with minimal public subsidy. In addition, it is found that this strategy compares favorably in terms of affordability with infill of the sort traditionally favored in the 'smart growth' literature, i.e. the construction of dense multifamily housing developments.

[RETHINKING PRIVATE ACCESSORY DWELLINGS](#) (5 pp.)

By William P. Macht. Urbanland online. (March 6, 2015)
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

[ADUS AND LOS ANGELES' BROKEN PLANNING SYSTEM](#) (4 pp.)

By CARLYLE W. Hall. The Planning Report. (April 26, 2016).
Land-use attorney Carlyle W. Hall comments on building permits for accessory dwelling units.

News:

[HOW ONE COLORADO CITY INSTANTLY CREATED AFFORDABLE HOUSING](#)

By Anthony Flint. The Atlantic-CityLab. (May 17, 2016).

In Durango, Colorado, zoning rules were changed to allow, for instance, non-family members as residents in already-existing accessory dwelling units.

[NEW HAMPSHIRE WINS PROTECTIONS FOR ACCESSORY DWELLING UNITS](#) (1 p.)

NLIHC (March 28, 2016)

Affordable housing advocates in New Hampshire celebrated a significant victory this month when Governor Maggie Hassan (D) signed Senate Bill 146, legislation that allows single-family homeowners to add an accessory

dwelling unit as a matter of right through a conditional use permit or by special exception as determined by their municipalities. The bill removes a significant regulatory barrier to increasing rental homes at no cost to taxpayers.

[NEW IN-LAW SUITE RULES BOOST AFFORDABLE HOUSING IN SAN FRANCISCO](#). (3 pp.)

By Rob Poole. Shareable. (June 10, 2014).

The San Francisco Board of Supervisors recently approved two significant pieces of legislation that support accessory dwelling units (ADUs), also known as “in-law” or secondary units, in the city...

[USING ACCESSORY DWELLING UNITS TO BOLSTER AFFORDABLE HOUSING](#) (3 pp.)

By Michael Ryan. Smart Growth America. (December 12, 2014).

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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**MEMORANDUM**

DATE: May 29, 2018
TO: Planning Directors and Interested Parties

FROM: Zachary Olmstead, Deputy Director
Division of Housing Policy Development

SUBJECT: **Local Agency Accessory Dwelling Units
Chapter 594, Statutes of 2017 (Senate Bill 229) and
Chapter 602, Statutes of 2017 (Assembly Bill 494)**

This memorandum is to inform you of the amendments to California law, effective January 1, 2018, regarding the creation of accessory dwelling units (ADU). Chapter 594, Statutes of 2017 (Senate Bill 229) and Chapter 602, Statutes of 2017 (Assembly Bill 494) build upon recent changes to ADU law (Government Code (GC) Section 65852.2) and further address barriers to the development of ADUs.

SB 229 and AB 494, among other changes, addresses the following:

- Clarifies an ADU can be created through the conversion of a garage, carport or covered parking structure.
- Requires special districts and water corporations to charge a proportional fee scale based upon the ADUs size or its number of plumbing fixtures.
- Reduces the maximum number of parking spaces for an ADU to one space.
- Allows replacement parking spaces to be located in any configuration, as a result, of a parking structure conversion to an ADU.
- Authorizes the Department of Housing and Community Development to review and comment on ADU ordinances.
- Defines the term "tandem parking" to mean two or more automobiles.

For assistance, please see the amended statute in Attachment A. In addition, pursuant to GC Section 65852.2(h), adopted ADU ordinances shall be submitted to HCD within 60 days of adoption. For more information and updates, please contact Greg Nickless, Housing Policy Analyst, at 916-274-6244.

ATTACHMENT A

TITLE 7, DIVISION 2, CHAPTER 4, ARTICLE 2

SB 229 and AB 494 Accessory Dwelling Units (65852.2)

Section 65852.2 of the Government Code is amended to read:

65852.2.

(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in ~~single-family and multifamily residential zones~~ *areas zoned to allow single-family or multifamily use*. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on ~~criteria~~ *criteria* that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit ~~is not intended for sale~~ *may be rented* separate from the primary ~~residence and residence~~ *residence*, but may be ~~rented~~ *not be sold or otherwise conveyed separate from the primary residence*.

(ii) The lot is zoned ~~for~~ *to allow* single-family or multifamily use and ~~contains an existing~~ *includes a proposed or existing* single-family dwelling.

(iii) The accessory dwelling unit is either attached ~~to the existing dwelling~~ 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*.

(iv) The ~~increased floor total~~ *area of floorspace* of an attached accessory dwelling unit shall not exceed 50 percent of the ~~existing living area, with a maximum increase in floor area of~~ *proposed or existing primary dwelling living area* or 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to ~~a~~ *an accessory dwelling unit or to a portion of an accessory dwelling unit*, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per ~~bedroom~~ *bedroom, whichever is less*. These spaces may be provided as tandem parking on ~~an existing~~ *a driveway*.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety ~~conditions, or that it is not permitted anywhere else in the jurisdiction~~ *conditions*.

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that ~~contains an~~ includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives ~~its first application on or after July 1, 1983, an~~ application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall ~~accept the application and~~ approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the *proposed or existing primary* dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

- (3) The accessory dwelling unit is part of the *proposed or existing* primary residence or an ~~existing~~-accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.
- (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~~-zone for single-family use 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, *including, but not limited to, a studio, pool house, or other similar 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. *A city may require owner occupancy for either the primary or the accessory dwelling unit created through this process.*
- (f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).
- (2) Accessory dwelling units shall not be considered ~~new residential uses~~ by a local agency, special district, or water corporation to be a new residential use for the purposes of calculating ~~local-agency~~-connection fees or capacity charges for utilities, including water and sewer service.
- (A) For an accessory dwelling unit described in subdivision (e), a local ~~agency~~-agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.
- (B) For an accessory dwelling unit that is not described in subdivision (e), a local ~~agency~~-agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.
- (g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.
- (h) Local agencies shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. *The department may review and comment on this submitted ordinance.*
- (i) As used in this section, the following terms mean:
- (1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.
- (2) "Local agency" means a city, county, or city and county, whether general law or chartered.
- (3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.
- (4) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:
- (A) An efficiency unit, as defined in Section 17958.1 of *the Health and Safety Code*.
- (B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.
- (5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
- (6) *"Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.*
- (j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.