

STAFF REPORT

PLANNING COMMISSION MEETING

MEETING DATE: August 17, 2020
SUBJECT: Consideration of Proposed Land Use Regulations Relating to Accessory Dwelling Units
CASE NUMBER: TA 20-0001 & EX 20-055

RECOMMENDATION

APPROVE a Resolution recommending that the City Council adopt an Ordinance amending certain provisions under Title 20 (Chapters 20.410 and 20.600) of the San Marcos Municipal Code to conform with the requirements of the 2019/2020 State Housing legislation relating to accessory dwelling units and find the project categorically exempt from the California Environmental Quality Act (CEQA).

INTRODUCTION

In 2019, the State legislature passed numerous pieces of housing legislation on topics including tenant protection and rent control, streamlining and increasing density, accessory dwelling units and “triplex zoning”, and CEQA reform. In particular, the State legislature determined that accessory dwelling units (ADUs) and junior accessory dwelling units (Junior ADUs) can provide affordable housing options to address the housing shortage. As a result, the State legislature approved, and the Governor signed into law, five new bills (AB 68, AB 670, AB 671, AB 881 and SB 13), which amended existing State law regarding ADUs and Junior ADUs. Effective January 1, 2020, amended Government Code sections 65852.2 and 65852.22 reduce restrictions on ADUs and Junior ADUs to encourage the creation of additional units. The new State laws also impose limits on the regulation of ADUs and Junior ADUs to further promote the construction of new units allowing ADUs on any lot that is zoned to allow single-family or multi-family residential uses. For background, the following provides a definition of an ADU as well as descriptions of the permitted ADU types.

ADU Definition

An ADU is a separate residential unit that provides independent living facilities on the same parcel as a single-family or multi-family dwelling. The main distinction between an ADU and other types of accessory structures is the inclusion of a kitchen in an ADU.

ADU Types

There are three types of ADUs:

Junior: A small living unit (up to 500 square feet) contained entirely within an existing single-family structure through conversion of existing living area or attached garage. The unit has a separate entrance and includes an efficiency kitchen, which has cooking and food preparation facilities. A junior ADU may have its own bathroom or may share a bathroom with the main dwelling.

Attached: A unit that is an addition to the main dwelling and/or conversion of an existing living area or attached garage. The unit provides complete independent living facilities, including a separate entrance and provisions for living, sleeping, eating, cooking and sanitation.

Detached: A unit that is not attached to the main dwelling. The unit may be a new structure or a conversion of an existing accessory structure, including a detached garage. The unit provides complete independent living facilities, including provisions for living, sleeping, eating, cooking and sanitation.

The proposed Resolution recommends that the City Council adopt an Ordinance amending various provisions of the Zoning Ordinance governing ADUs contained in Chapters 20.410 and 20.600 of the Zoning Ordinance to conform with recently adopted State legislation.

DISCUSSION

AB 68, AB 670, AB 671, AB 881 and SB 13, which amended Government Code sections 65852.2 and 65852.22, became effective on January 1, 2020. The new bills modify a variety of ADU development standards and the ADU approval process. The below summary discusses the relevant

changes required by the new bills and the corresponding revisions to SMMC Chapter 20.410 in the proposed Ordinance.

ADU Location

The City's current ADU Ordinance indicates specific agricultural and residential zoning districts which ADU can be located. The new bills require that ADUs be permitted in areas zoned to allow single-family and multi-family dwellings. As a result ADUs are now permitted in any zone, including Specific Plan Areas within the City that allow single-family and multi-family residential dwellings.

The description of where ADUs are permitted are reflected in proposed section 20.410.020 – Applicability.

Junior ADUs Permitted

Local jurisdictions previously had the option to allow Junior ADUs in their ADU ordinance. The City's current ADU Ordinance does not permit Junior ADUs. The new bills require that cities allow Junior ADUs in addition to standard ADUs. As reflected in the above definition, a Junior ADU is limited to 500 square feet. Junior ADUs are allowed on a single-family residential lot on which a detached ADU is also permitted. Cities must ministerially approve a proposed Junior ADU that is created within an existing or proposed single-family dwelling, including an expansion of up to 150 square feet to accommodate ingress and egress. Also, owner occupancy is required for the primary dwelling in which a Junior ADU is proposed. Lastly, a deed restriction must be recorded for a Junior ADU and must be filed with the permitting agency. The deed restriction must: (1) prohibit the sale of the Junior ADU separately from the primary dwelling, including a statement that the deed restriction may be enforced against future purchasers; and (2) restrict the size of the Junior ADU to conform with State law requirements.

Junior ADUs are defined in the proposed revised Chapter 20.410, section 20.410.020.C, and are permitted in proposed section 20.410.020.D. The deed restriction requirement for Junior ADUs is included in proposed section 20.410.060.S.3.

Shorter Application Review Process

Previously, local jurisdictions were required to act on completed ADU applications within 120 days. Now, a city must act on a completed ADU or Junior ADU permit application within 60 days of receipt of the application if there is an existing single-family or multi-family dwelling on the parcel. If a city receives a complete application for a building permit to construct an ADU or Junior ADU in

conjunction with an application to construct a new primary dwelling on the lot, the city may delay its processing of the ADU or Junior ADU application until the city processes the application for the new primary dwelling.

The required application timeframes are reflected in proposed section 20.410.030.A.

Prohibition on Owner Occupancy Requirement

Cities are now prohibited from imposing an owner occupancy requirement on ADUs from January 1, 2020 until January 1, 2025. This restriction is not retroactive and does not affect existing ADUs that have an owner occupancy requirement. This restriction does not apply to Junior ADUs. As noted above, Junior ADUs must be subject to an owner-occupant requirement.

The revised owner occupancy requirement is reflected in proposed section 20.410.060.J.

Restrictions on Parking Requirements

Pursuant to the new bills, local jurisdictions may not impose certain parking requirements on ADUs. When a garage, carport or covered parking structure is razed or modified to accommodate construction of or conversion to an ADU, a city may not require that any of the demolished off-street parking spaces be replaced however the Ordinance does require that any pre-existing driveway parking spaces be maintained. The Ordinance does require one off-street parking space per a new ADU except if the ADU is located among other instances, within one-half mile walking distance of public transit. Then, the local jurisdiction may not impose any parking requirements on the ADU. No additional parking is required for a Junior ADU.

The revised parking requirements are reflected in proposed section 20.410.060.M.

Prohibitions on Certain Size, Height and Lot Restrictions

Local jurisdictions are now prohibited from requiring a minimum lot size for an ADU. The new laws also prohibit certain minimum and maximum size limits for ADUs. A city's minimum square footage requirement cannot prohibit at least one Junior ADU with a 500 square foot maximum size.

The maximum size permitted for an attached ADU must be at least 850 square feet or 1,000 square feet if the ADU includes more than one bedroom. An attached ADU cannot exceed 50 percent of the living area of the primary dwelling, however the maximum ADU square footage allowed must be at least 800 square feet. The existing Ordinance limits the floor area of attached ADUs to a maximum of 30 percent of the primary dwelling living area.

For detached ADUs, the proposed Ordinance allows for a maximum square footage of 850 square feet for ADUs on lots less than one acre, except ADUs that provide more than one bedroom may have a maximum of 1,000 square feet. On a lot greater than one acre, the proposed Ordinance allows an ADU to be a maximum of 1,000 square feet. The current Ordinance limits ADUs to: (1) 750 square feet on lots less than three-fourths of an acre; (2) 850 square feet on lots between three-fourths of an acre and less than one acre; and (3) 1,000 square foot on lots of 1 acre or larger. The proposed Ordinance also allows detached ADUs to have a maximum height limit of sixteen (16) feet compared to fifteen (15) feet under the existing Ordinance. The 16 foot height limit will not apply to ADUs proposed above garages and rather must comply with the height limits of the zone.

The revised size, height and lot restrictions are included in proposed section 20.410.060.E.

Limits on Setbacks

A city may not impose a setback requirement on an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an ADU. A city may require side and rear setbacks of no more than four (4) feet (previously, a five-foot setback requirement was permitted) for an ADU that is not converted from or constructed in the same location as an existing structure.

The new setback requirements are reflected in various sections throughout the proposed Chapter 20.410, particularly in sections 20.410.060.B and 20.410.060.G.

ADUs in Existing Multi-Family Dwellings

The current Ordinance only allows ADUs on parcels with existing or proposed single-family residential dwellings. Local jurisdictions must now also allow ADUs on parcels containing multi-family dwellings. Additionally, for any property located within a multi-family residential or mixed-use zone, a city must now ministerially approve an application for a permit to construct the following:

- Not more than two ADUs on a lot that has one or more existing multi-family dwelling structures, provided that the ADUs are detached from the existing structure(s) and are subject to certain height and rear and side yard setback requirements.
- In addition portions of the existing multi-family dwelling structures that are not used as livable space (storage rooms, boiler rooms, passageways, attics, basements and garages) may be converted to attached ADU units.

ADUs are permitted on parcels zoned for multifamily dwelling residential use in proposed section 20.410.020.D.

Impact Fee and Utilities Fee Limitations

The new ADU legislation also limits the imposition of Public Facility Fees (PFF) (impact fees) and utilities fees on ADUs. New or separate PFF or connection fees may not be imposed on ADUs smaller than 750 square feet. PFF imposed on ADUs of 750 feet or more must be proportionate to the square footage of the main dwelling. PFF fees on ADUs are currently proportionate to the burden of the ADU on the public facility and are assessed based on either the total square footage of the unit or the number of plumbing fixtures for the unit.

The new utilities fees are reflected in proposed section 20.410.060.I. This section is also amended to reflect that the City does not have jurisdiction over and therefore does not assess utilities fees or capacity charges.

Other sections throughout Chapter 20.410 are amended to conform with the new state requirements discussed above. Also an updated definition of "Accessory Dwelling Unit" is included in Section 20.600.030 consistent with State law.

Housing and Community Development (HCD) Review

State legislation requires that local agencies submit a copy of their adopted Ordinance to HCD within 60 days after City Council adoption. HCD would then provide findings to the City indicating if the adopted Ordinance complies with the ADU legislation. The City had an opportunity to obtain early HCD review to assure that the City's proposed Ordinance was in compliance and therefore avoiding possible edits to the Ordinance following City Council adoption. HCD indicated that the City Ordinance generally complies with ADU legislation however did request edits be made to the Ordinance (Attachment C). HCD comments have been incorporated into the Ordinance.

ENVIRONMENTAL DETERMINATION

The proposed Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA). It is recommended that the Planning Commission recommend to City Council that this is not a project as defined in Section 15378 of the CEQA Guidelines because there is no potential for it to result in a physical change in the environment, either directly or indirectly. Even if the proposed Ordinance were to be considered a project subject to CEQA, it would be exempt from



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CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that the proposed Ordinance would have a significant effect on the environment.

ATTACHMENT(S)

Resolution PC 20-4854 Amending SMMC Title 20

Attachment A - City Council Ordinance Amending SMMC Title 20 – Clean Version

Attachment B – Strike-out/Underline Version of Ordinance Amending SMMC Title 20

Attachment C – Housing and Community Development (HCD) Comments

Prepared by:

A handwritten signature in blue ink, appearing to read "J. Farace".

Joseph Farace, Planning Manager

Submitted/Approved by:

A handwritten signature in black ink, appearing to read "Dahvia Lynch".

Dahvia Lynch, Development Services Department Director

RESOLUTION PC 20-4854

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN MARCOS RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE AMENDING TITLE 20 OF THE SAN MARCOS MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS

Project TA 20-0001, CEQA Exemption 20-055
City of San Marcos

WHEREAS, Chapter 20.410 of the San Marcos Municipal Code (SMMC), as well as certain provisions contained in Title 20 of the SMMC (Zoning Ordinance), regulate Accessory Dwelling Units in the City of San Marcos. The City's regulations were last updated in 2017; and

WHEREAS, in 2019 the California State Legislature approved, and the Governor signed into law, AB 68, AB 670, AB 671, AB 881 and SB 13, which became effective on January 1, 2020 and amended Government Code sections 65852.2 and 65852.22 to modify the development standards and approval process for Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (Junior ADUs); and

WHEREAS, amended Government Code section 65852.2 provides that any existing local ADU ordinance failing to meet the requirements of the new State legislation regarding ADUs shall be null and void; and

WHEREAS, the City finds many existing City regulations for ADUs that conflict with the provisions of Government Code sections 65852.2 and 65852.22, rendering the City's existing ADU regulations null and void as a matter of law; and

WHEREAS, without a compliant ADU ordinance in place, the City's regulation of ADUs is limited to the application of the default standards provided by Government Code sections 65852.2 and 65852.22; and

WHEREAS, the regulation of ADUs based solely on the default statutory standards would prevent the City from imposing certain of its building regulations and zoning ordinance standards, threatening the character of existing neighborhoods and negatively impacting property value, personal privacy and fire safety; and

WHEREAS, the City must amend its ADU regulations to comply with the amended provisions of Government Code sections 65852.2 and 65852.22, to preserve community character and quality of life and ensure the health and safety of its residents, orderly development and compliance with the City's building regulations and zoning ordinance; and

WHEREAS, the Development Services Department did study said request and recommends approval of said request; and

WHEREAS, the required public hearing held on August 17, 2020 was duly advertised and held in the manner prescribed by law; and

WHEREAS, this ordinance is exempt from review under the California Environmental Quality Act (CEQA; California Public Resources Code Section 21000 et seq.) and CEQA regulations (Title 14, California Code of Regulations Section 15000, et seq.) because this ordinance is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3));

WHEREAS, the Planning Commission's decision is based on the following findings and determinations:

1. The proposed Text Amendment to the Zoning Ordinance will not adversely affect the implementation of the San Marcos General Plan in that the Text Amendment does not conflict with any goal, objective, or policy of the General Plan.

2. The proposed Text Amendment to the Zoning Ordinance will not be detrimental to the public health, safety, morals, and welfare in that the Text Amendment will address the regulation of accessory dwelling units, in compliance with State law.

NOW, THEREFORE, the Planning Commission resolves as follows:

1. The foregoing recitals are true and correct.
2. The project exemption (EX 20-055) from CEQA pursuant to 15061(b)(3) of the CEQA Guidelines is hereby recommended to the City Council for approval.
3. The Text Amendment modifying certain provisions contained in the Zoning Ordinance, as specified in redlined, underlined strikeouts in Attachment B, is recommended to the City Council for approval.

PASSED AND ADOPTED by the Planning Commission of the City of San Marcos, at a regular meeting held on this 17th day of August, 2020 by the following roll call vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSENT: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:

APPROVED:

Eric Flodine, Chairman
SAN MARCOS CITY PLANNING COMMISSION

ATTEST:

Gina Henderson, Senior Office Specialist
SAN MARCOS CITY PLANNING COMMISSION



City of San Marcos
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ATTACHMENT A

City Council Ordinance Amending SMMC Title 20 – Clean Version

CHAPTER 20.410 - ACCESSORY DWELLING UNITS AND ACCESSORY STRUCTURES

Section 20.410.010 - Purpose of Chapter

The purpose of this chapter is to establish standards for permitting accessory dwelling units and accessory buildings or structures (accessory structures) on Agricultural, Residential and Mixed Use Zone properties to ensure compliance with State law and compatibility with the property and the adjacent neighborhood.

Section 20.410.020 - Applicability

The provisions of this chapter shall apply to new construction, modifications, and legal conversions of all accessory structures and accessory dwelling units on any lot that is zoned to allow single-family or multifamily dwelling residential use, subject to the permit requirements of the applicable Zone.

A. Accessory Structures. Accessory structures shall be limited to Agricultural (A) Zones and Residential (R) Zones under this chapter. Similar structures in non-residential Zones shall comply with the standards of the applicable Zone.

B. Accessory Dwelling Units. “Accessory dwelling unit” (ADU) means an attached or a detached residential dwelling unit that 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 or multifamily dwelling is situated. An ADU also includes the following:

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

C. Junior Accessory Dwelling Units. “Junior Accessory Dwelling Unit” (Junior ADU) means a unit that is no more than 500 square feet and is contained entirely within an existing or proposed single-family residence. A Junior ADU must include a separate entrance from the single-family residence and may include separate sanitation facilities or may share sanitation facilities with the existing or proposed structure. A Junior ADU must include an efficiency kitchen, which shall include the following:

1. A cooking facility with appliances; and
2. A food preparation counter with storage cabinets that are of reasonable size in relation to the size of the Junior ADU.

D. Construction of ADUs. Construction of an ADU shall be permitted on a lot that is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling, subject to the following minimum parcel standards and requirements:

1. **Parcels Zoned to Allow Single-Family Dwelling Residential Use.** Parcels zoned to allow single-family dwelling residential use may have a maximum of one (1) ADU and one (1) Junior ADU, subject to the requirements of this section.

2. **Parcels Zoned to Allow or Developed with Multifamily Dwelling Residential Use.**
Parcels zoned to allow or developed with existing multifamily dwelling residential use may have a maximum of two (2) detached ADUs, subject to the requirements of this section. In addition to the two (2) detached ADUs, portions of existing dwelling structures that are not used as livable space, including storage rooms, boiler rooms, passageways, attics, basements, and garages may be converted into attached ADUs on parcels zoned to allow or developed with existing multifamily dwelling residential use.
3. The parcel is zoned for single-family or multifamily dwelling residential use; and
 - a. Has an existing single-family or multifamily dwelling; or
 - b. The ADU will be built in conjunction with the construction of a single-family or multifamily dwelling.
4. The ADU will be:
 - a. Created within the living area of a former, existing, or proposed dwelling unit, garage, or accessory structure located on the parcel;
 - b. Attached to an existing or proposed dwelling unit located on the parcel; or
 - c. Detached from an existing or proposed dwelling unit located on the parcel but located on the same parcel as the existing or proposed dwelling unit.

Section 20.410.030 - Applications

- A. **Building Permit.** A building permit shall be required for ADUs and Junior ADUs, pursuant to compliance with the minimum requirements described below. The approval process shall be ministerial in nature, and the City shall approve or disapprove an application for a building permit to construct an ADU and Junior ADU on a lot with an existing primary dwelling within 60 days after receiving a complete application. If a complete application for a building permit to construct an ADU is submitted in connection with an application to construct a new primary dwelling on the lot, the application may not be approved until the application is approved for the new dwelling. The application for the ADU must be processed ministerially regardless of the approvals required for the primary dwelling.
- B. **ADUs and Junior ADUs Within an Existing Space.** The City shall approve an application for a building permit to construct an ADU or Junior ADU on a lot that is zoned to allow single-family or multifamily dwelling residential use if all of the following conditions are met:
 1. The ADU or Junior ADU is contained within the proposed or existing space of a single-family dwelling unit and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure, provided that any expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodate ingress and egress;
 2. The ADU or Junior ADU has independent exterior access from the proposed or existing dwelling;

3. The side and rear setbacks are sufficient for fire safety; and
4. The Junior ADU complies with the requirements of Section 20.410.020.C.

Section 20.410.040 –Development Standards for Accessory Structures

A. **Accessory Structures.** The following standards shall apply to all accessory structures that require a building permit and that represent a modification of the development standards of the applicable Zone. The following guidelines do not apply to ADUs, but to other accessory structures. Where the provisions of this section do not offer guidance, the development standards of the applicable Zone shall prevail. Accessory structures shall adhere to the following:

1. Meet the design standards of Section 20.410.050 (Accessory Structure and ADU Design).
2. Shall be limited to uses that are accessory to the main use, including a cabana, garage or carport, gazebo, greenhouse, pergola, pool and/or spa and related equipment, or workshop. An accessory structure shall not be used for dwelling purposes. Bathtub(s), fireplace(s), and/or kitchen (full or partial) facilities are prohibited in accessory structures. Air conditioning, heating, shower, toilet, washtub, and/or washer and dryer facilities are allowed within an accessory structure; however, a deed restriction shall be required and shall state that the accessory structure shall be maintained as an accessory structure and shall not be used for sleeping quarters or be converted to a residential use.
3. Prohibited accessory structures are freight containers, railroad cars, intermodal containers, and similar storage-type structures, unless they are altered to be similar and compatible with the primary dwelling unit. Any structures allowed under this provision must also comply with any requirements in Section 20.400.140.

B. **Accessory Structure(s) Size.** The maximum allowable gross floor area for all completely enclosed accessory structures in conjunction with an existing single-family residence, excluding ADUs, shall be equal to forty percent (40%) of the living area of the primary dwelling unit, or eight hundred (800) square feet of gross floor area, whichever is less. The total gross floor area shall include all accessory structures, including those that do not require a building permit, with the exception of those that are completely open on at least three (3) sides, exclusive of any supporting columns.

C. **Height.** Height of the accessory structure(s) shall be one (1) story maximum, up to a maximum of fifteen (15) feet at peak of roof, and shall not exceed the height of the primary dwelling unit.

D. **Location.** The setback requirements of the applicable Zone for the primary structure shall apply to all accessory structures, except as modified below:

1. If detached, a minimum of five (5) feet separation from the primary dwelling unit or any other accessory structure. A breezeway may span the space between the two (2) structures.

2. Accessory structures shall not be permitted within the required rear yard in the Agricultural Zones (A-1, A-2, or A-3), except for permitted fences and walls.
3. Rear property line setback: minimum five (5)-foot setback required.
4. Interior property line setback:
 - a. Consistent with the interior property line setback of the applicable Zone; or
 - b. Equal to the interior property line setback of the existing primary building, whichever is less.
 - c. If located behind the primary building, minimum of five (5)-foot setback to interior property line shall be permitted in the rear yard area.
 - d. Unenclosed patios (i.e., patio covers) attached to the main building shall meet the minimum interior property line setback of the base Zone.
5. Front or Street Property Line Setback: Accessory structures shall not occupy any portion of a required setback from the front property line or any street property line and shall not be closer to the ROW than a dwelling unit.

Section 20.410.050 - Accessory Structure and ADU Design

All accessory structures and ADUs shall be architecturally compatible with any existing dwelling unit on the same lot.

1. All accessory structures and ADUs shall blend with the existing primary dwelling unit on the lot and neighborhood residences by incorporating the same or similar architectural features, building materials, and color as the primary dwelling unit on the property. These features shall include roofing material, roof design, fascia, exterior building finish, color, exterior doors and windows (including ratios of window dimensions [i.e., width to height] and window area to wall area), garage door, and architectural enhancements. If the accessory structure or ADU does not blend with the existing primary dwelling unit on the lot, the architectural features of the primary dwelling unit may be modified to modernize the structure, as long as the accessory structure or ADU architecturally blends with the modified primary dwelling unit, and both the accessory structure or ADU and the primary dwelling unit blend with neighborhood residences.
2. The exterior design of all accessory structures and ADUs shall be in harmony with and maintain the scale of the neighborhood. The design of the ADU shall relate to the design of the primary dwelling unit and shall not visually dominate it or the surrounding properties.

Section 20.410.060 - ADU and Junior ADU Requirements

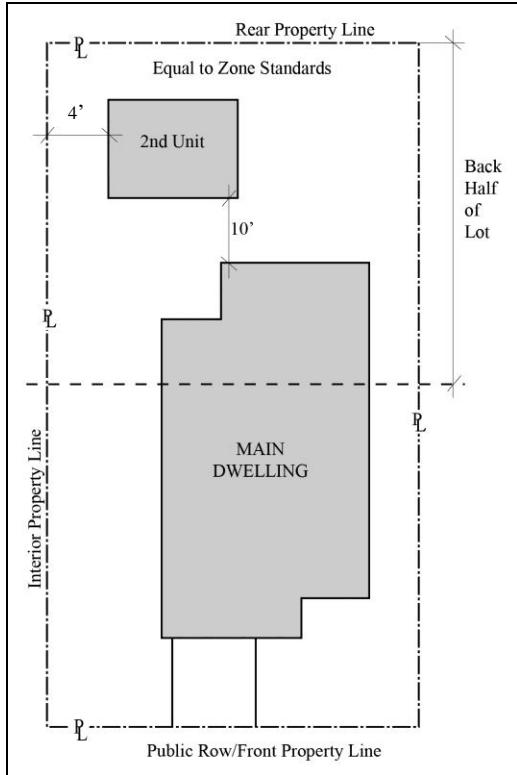
Each parcel that is zoned to allow single-family dwelling residential use meeting the requirements of Subsection 20.410.020.D shall be permitted the maximum construction of one (1) ADU and one (1) Junior ADU on the parcel. Each parcel that is zoned to allow multifamily dwelling residential use meeting the requirements of Subsection 20.410.020.D may have a maximum of two (2) detached ADUs, and portions of existing dwelling structures on parcels zoned to allow multifamily dwelling residential use that are not used as livable space, including but not limited to, storage rooms, boiler rooms, passageways, attics, basements, and garages, may be converted into attached ADUs. ADUs and Junior ADUs shall be subject to the following requirements:

- A. **Density.** ADUs do not exceed the allowable density for the lot upon which the ADU is located, because ADUs are a residential use consistent with the existing General Plan and Zoning designation for the lot.
- B. **Zoning Compliance.** To the extent conformance would not conflict with State law, the ADU shall conform to all land use and development standard provisions of the applicable Zone, including setbacks and separation of buildings, except as expressly permitted under Subsection 20.410.060.E; provided, however, that rear and side setbacks for a new detached ADU shall be a minimum of four (4) feet.
- C. **Building Code Compliance.** The ADU or Junior ADU shall meet all applicable requirements of the California Building Code.
- D. **Annexation to Community Facilities District.** ADUs and Junior ADUs shall be subject to annexation to applicable Community Facility Districts, as established by City Ordinance.
- E. **Size and Height Limitations.** The building size for all ADUs shall be limited to the smallest square footage applicable to the parcel:
 1. **Size of attached ADU shall be:**
 - a. The total floor area of an attached ADU shall not exceed fifty percent (50%) of the living area of the proposed or existing primary dwelling, provided, however, that the maximum square footage allowed must be at least eight hundred (800) square feet of gross floor area.
 - b. The total square footage for an attached ADU providing one bedroom shall not exceed eight hundred fifty (850) square feet of gross floor area.
 - c. The total square footage for an attached ADU that provides more than one bedroom shall not exceed one thousand (1,000) square feet of gross floor area.
 2. **Size of detached ADU shall be:**
 - a. Lots of less than one (1) acre: maximum eight hundred fifty (850) square feet of gross floor area permitted, except ADUs that provide more than one bedroom, for which a maximum of one thousand (1,000) square feet of gross floor area is permitted.

- b. Lots one (1) acre or more: maximum one thousand (1,000) square feet of gross floor area permitted.
3. Height of detached ADU shall be one (1) story maximum, up to a maximum of sixteen (16) feet at peak of roof, and overall height shall remain consistent with the requirements of the applicable Zone in which the ADU is located. This one (1) story maximum height shall not include the garage if an ADU is built above a garage.
4. **Size of Junior ADUs:**
 - a. Junior ADUs cannot exceed a maximum of five hundred (500) square feet of gross floor area.

F. Exterior Access. ADUs and Junior ADUs shall have separate exterior access from the primary dwelling.

Figure 20.410-1 Placement of Accessory Dwelling Units



G. Location, Setbacks. Except as otherwise provided in Subsections 20.410.060.G.1 and 20.410.060.G.4, a detached ADU shall be located within the rear fifty percent (50%) of the lot and shall comply with all setbacks of the applicable Zone required for a single-family residence, provided, however, that the side and rear setbacks shall be a minimum of four (4) feet. The ADU shall be a minimum of ten (10) feet from any structure on-site (eave to eave).

1. No setbacks are required for an existing living area or accessory structure that is converted to an ADU or is in the same location and to the same dimensions as the original structure.
2. A setback of four (4) feet from the side and rear lot lines is required for an ADU that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
3. Except as otherwise provided in Subsections 20.410.060.G.1 and 20.410.060.G.4, an ADU shall not be located within the required front property line setback and shall not be closer to the ROW than the primary dwelling, except that any side or rear setback shall not be required to exceed four (4) feet.
4. No front setback shall be required for one (1) detached, new construction ADU if no other feasible location on the parcel is available, provided that the following requirements are satisfied:
 - a. The ADU has a minimum of four (4) foot side and rear setbacks;
 - b. The total floor area of the ADU does not exceed eight hundred (800) square feet;
 - c. The ADU is a maximum of sixteen (16) feet in height; and
 - d. The location of the ADU will allow access to adequate water and sewer services and will not impact traffic flow or public safety.

H. Adequate Public Facilities. Adequate public facilities (including water and sewer) and utilities for the ADU must be available or made available at the time of development and shall be sized in accordance with applicable codes. Local agencies with jurisdiction over utilities must provide utilities for the ADU at the time of development.

1. Local agencies with jurisdiction over utilities shall determine whether a new or separate utility connection is required to be installed directly between a newly constructed ADU and the utility. An ADU that is created within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure shall not require a new or separate utility connection.
2. The County of San Diego Health and Human Services Department must approve any private sewage disposal system that is required under this chapter.
3. The City must obtain a “will serve” letter from all local agencies with jurisdiction over utilities for the ADU prior to the issuance of a building permit for the construction of the ADU.

I. Public Facilities and Utilities Fees.

1. The City does not assess utilities fees or capacity charges.

2. All public facilities fees required by this chapter shall be proportionate to the burden of the ADU on the public facility, shall be based upon the size of the primary dwelling unit, and shall not exceed the reasonable cost of providing the service. No public facilities fees shall be imposed on ADUs smaller than 750 square feet.
3. All public facilities fees required by this chapter shall be paid prior to the issuance of any building permit required for the construction of the ADU.

J. **Owner Occupancy and Owner Applicant.** The property owner of the parcel shall be the permit applicant for the ADU. For ADU applications received prior to January 1, 2020, or on or after January 1, 2025, the property owner shall be living on the premises at the time of the application and approval and shall continuously reside on premises in either the primary dwelling or the ADU. There is no owner occupancy requirement for ADU applications received on or after January 1, 2020 and before January 1, 2025. The ADU may be rented but not for less than 31 days. The ADU may not be sold separately from the primary dwelling unit. An ADU may be approved and built at the same time as the primary dwelling unit is approved and constructed. This section shall not apply to Junior ADUs.

K. **Occupancy.** The maximum occupancy of the ADU shall conform to the latest adopted California Building Code and in conformance with residential standards as adopted by the Zoning Ordinance.

L. **Siting.** The location and design of the ADU shall not significantly impact the parking of adjacent properties.

M. **Parking.**

1. A minimum of one (1) on-site paved parking space shall be provided for a new ADU, in addition to the required parking for the primary dwelling unit, except as provided in Subsection 20.410.060.M.4. The additional parking space(s) shall be a minimum dimension of nine (9) feet by eighteen (18) feet.
2. Offstreet parking is permitted in setback areas in locations determined by the City, or through tandem parking, unless specific findings are made by the City that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions. Parking spaces are subject to the following:
 - a. Parking may be provided on an existing driveway but shall not block sidewalk access or encroach into the public right-of-way.
 - b. No more than thirty (30) percent of a front yard shall be dedicated to vehicle parking.
 - c. Except for an approved driveway, vehicles must be parked on an acceptable all-weather surface, such as brick, permeable pavers or other stable, dust-free surface deemed acceptable by the Development Services Department and Stormwater Division.

3. If a garage, carport or covered parking structure is demolished or converted in conjunction with the construction of an ADU, the City shall not require that those off-street parking spaces be replaced. However, if a garage, carport or covered parking structure is demolished or converted in conjunction with the construction of an ADU, any pre-existing driveway parking spaces must be maintained.
4. No parking standards shall be imposed by the City on an ADU in any of the following instances:
 - a. The ADU is located within one-half mile walking distance of public transit as defined in California Public Resources Code §21155(b) (a location, including but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public);
 - b. The ADU is located within an architecturally and historically significant historic district;
 - c. The ADU is located within an existing primary dwelling unit or an existing accessory structure;
 - d. On-street parking permits are required but not offered to the occupant of the ADU; or
 - e. There is a car share vehicle located within one block of the ADU.
5. No additional parking is required for a new Junior ADU.
6. Required parking spaces shall be kept clear and used exclusively for vehicle parking. Such spaces shall not be used for storage or other uses.

N. **Driveway.** A driveway connection serving both the main and ADU is highly encouraged where feasible.

O. **Emergency Access.** Emergency access and fire apparatus roads shall be provided to the satisfaction of the City of San Marcos Fire Marshal in accordance with the current edition of the California Fire Code.

P. **Fire Sprinklers.** Fire sprinklers shall be required for the ADU if required for the primary dwelling unit.

Q. **Community Character.** The ADU shall be consistent with the character, architecture, and density of the existing parcel structures.

R. **Ridgeline Overlay Zone Restrictions.** ADUs in the Ridgeline Overlay Zone must comply with certain sections of Chapter 20.260, including sections 20.260.050.E (Building Placement, Maximum Height, and Basements), 20.260.050.F (Architecture), 20.260.050.H (Color and Materials), and 20.260.050.J (Fire Fuel Modification), except as prohibited by state law. However, ADUs in the Ridgeline Overlay Zone shall not be subject to any requirements that conflict with the requirements set forth in this chapter.

S. **Deed Restriction.** Prior to the issuance of a building permit for the ADU or Junior ADU, a Deed (Land Use) Restriction shall be recorded with the County Recorder that includes all the following:

1. Limiting the total number of ADUs on the property as follows:
 - a. One (1) ADU and one (1) Junior ADU on a lot that is zoned to allow single-family dwelling residential use; and
 - b. Two (2) ADUs on a lot that is zoned to allow multifamily dwelling residential use.
2. For an ADU:
 - a. Prohibiting the unit from being sold separately, including a statement that the deed restriction may be enforced against future purchasers;
 - b. Prohibiting the unit from being rented for a term less than thirty-one (31) days; and
 - c. For applications received before January 1, 2020 or on or after January 1, 2025 only, requiring that one (1) of the dwelling units (main or accessory dwelling unit) shall be owner occupied.
3. For a Junior ADU:
 - a. Prohibiting of the sale of the Junior ADU separately from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers;
 - b. Restricting of the size of the Junior ADU stating that the maximum permitted gross floor area of the Junior ADU is five hundred (500) square feet;
 - c. Requiring that the Junior ADU's independent exterior access shall be retained;
 - d. Prohibiting the unit from being rented for a term less than thirty-one (31) days; and
 - e. Requiring that one (1) of the dwelling units (main or Junior ADU) shall be owner occupied.

T. **Certificate.** A Certificate of Occupancy for an ADU or a Junior ADU shall not be issued prior to the Certificate of Occupancy for the primary dwelling unit.

U. **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. “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. “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU.
5. “Public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
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.

Section 20.600.030 – “A” Definition

Accessory Dwelling Unit. An attached or a detached residential dwelling unit that 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 or multifamily dwelling is situated. An Accessory Dwelling Unit also includes the following:

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



City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069

ATTACHMENT B

Strike-out/Underline Version of Ordinance Amending SMMC Title 20

CHAPTER 20.410 - ACCESSORY DWELLING UNITS AND ACCESSORY STRUCTURES

Section 20.410.010 - Purpose of Chapter

The purpose of this chapter is to establish standards for permitting accessory dwelling units and accessory buildings or structures (accessory structures) on Agricultural, ~~and Residential and Mixed Use Zone~~ properties to ensure compliance with State law and compatibility with the property and the adjacent neighborhood. ~~compatibility with the property and the adjacent neighborhood. This chapter is in compliance with California Government Code Sections 65852.150 and 65852.2, which establish regulations for accessory dwelling units.~~

Section 20.410.020 - Applicability

The provisions of this chapter shall apply to new construction, modifications, and legal conversions of all accessory structures and accessory dwelling units ~~in the Agricultural (A-1, A-2, A-3) and Residential Zones (R-1-20, R-1-10, R-1-7.5, R-2, R-3-6, R-3-10), subject to the permit requirements of the applicable Zone. on any lot that is zoned to allow single-family or multifamily dwelling residential use, subject to the permit requirements of the applicable Zone.~~

- A. **Accessory Structures.** Accessory structures shall be limited to Agricultural (A) Zones and Residential (R) Zones under this chapter. Similar structures in non-residential Zones shall comply with the standards of the applicable Zone.
- B. **Accessory Dwelling Units.** ~~Construction of one(1) accessory dwelling unit shall be permitted on all A Zone parcels and R-1 Zone parcels, subject to the following minimum parcel standards:~~ “Accessory dwelling unit” (ADU) means an attached or a detached residential dwelling unit that 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 or multifamily dwelling is situated. An ADU also includes the following:
 1. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
 2. A manufactured home, as defined in Section 18007 of the Health and Safety Code.
 3. ~~An accessory dwelling unit does not already exist on the parcel;~~
 4. ~~Accessory dwelling unit would be: (i) created within the living area of an existing dwelling unit or accessory structure located on the parcel; (ii) attached to an existing dwelling unit located on the parcel; or (iii) detached from an existing dwelling unit located on the parcel, but located on the same parcel as the existing dwelling unit.~~

C. Junior Accessory Dwelling Units. “Junior Accessory Dwelling Unit” (Junior ADU)

means a unit that is no more than 500 square feet and is contained entirely within an existing or proposed single-family residence. A Junior ADU must include a separate entrance from the single-family residence and may include separate sanitation facilities or may share sanitation facilities with the existing or proposed structure. A Junior ADU must include an efficiency kitchen, which shall include the following:

1. A cooking facility with appliances; and
2. A food preparation counter with storage cabinets that are of reasonable size in relation to the size of the Junior ADU.

D. Construction of ADUs. Construction of an ADU shall be permitted on a lot that is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling, subject to the following minimum parcel standards and requirements:

1. **Parcels Zoned to Allow Single-Family Dwelling Residential Use.** Parcels zoned to allow single-family dwelling residential use may have a maximum of one (1) ADU and one (1) Junior ADU, subject to the requirements of this section.
2. **Parcels Zoned to Allow or Developed with Multifamily Dwelling Residential Use.** Parcels zoned to allow or developed with existing multifamily dwelling residential use may have a maximum of two (2) detached ADUs, subject to the requirements of this section. In addition, to the two (2) detached ADUs, portions of existing dwelling structures that are not used as livable space, including storage rooms, boiler rooms, passageways, attics, basements, and garages may be converted into attached ADUs on parcels zoned to allow or developed with existing multifamily dwelling residential use.
3. The parcel is zoned for single-family or multifamily dwelling residential use; and
 - a. Has an existing single-family or multifamily dwelling; or
 - b. The ADU will be built in conjunction with the construction of a single-family or multifamily dwelling.
4. The ADU will be:
 - a. Created within the living area of a former, existing, or proposed dwelling unit, garage, or accessory structure located on the parcel;
 - b. Attached to an existing or proposed dwelling unit located on the parcel; or
 - c. Detached from an existing or proposed dwelling unit located on the parcel but located on the same parcel as the existing or proposed dwelling unit.

Section 20.410.030 - Applications

A. **Building Permit.** A building permit shall be required for ~~accessory dwelling units ADUs and Junior ADUs~~, pursuant to compliance with the minimum requirements described below. The approval process shall be ministerial in nature, and the City shall approve or disapprove an application for a building permit to construct an ~~accessory dwelling unit within 120 days ADU and Junior ADU~~ on a lot with an existing primary dwelling within 60 days after receiving the application. If a complete application for a building permit to construct an ADU is submitted in connection with an application to construct a new primary dwelling on the lot, the application may not be approved until the application is approved for the new dwelling. The application for the ADU must be processed ministerially regardless of the approvals required for the primary dwelling.

B. **Accessory Dwelling Units Within an Existing Space.** The City shall approve an application for a building permit to construct an accessory dwelling unit within a single-family residential zone if all of the following conditions are met: (i) the accessory dwelling unit is contained within the existing space of a single-family dwelling unit, including the primary dwelling unit, attached or detached garage or other accessory structure; (ii) the accessory dwelling unit has independent exterior access from the existing space; and (iii) the side and rear setbacks are sufficient for fire safety. No additional requirements or development standards may be imposed on such accessory dwelling units.

ADUs and Junior ADUs Within an Existing Space. The City shall approve an application for a building permit to construct an ADU or Junior ADU on a lot that is zoned to allow single-family or multifamily dwelling residential use if all of the following conditions are met:

1. The ADU or Junior ADU is contained within the proposed or existing space of a single-family dwelling unit and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure, provided that any expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodate ingress and egress;
2. The ADU or Junior ADU has independent exterior access from the proposed or existing dwelling;
3. The side and rear setbacks are sufficient for fire safety; and
4. The Junior ADU complies with the requirements of Section 20.410.020.C.

Section 20.410.040 - Development Standards for Accessory Structures

A. **Accessory Structures.** The following standards shall apply to all accessory structures that require a building permit and that represent a modification of the development standards of the applicable Zone. The following guidelines do not apply to ADUs, but to other accessory structures. Where the provisions of this section do not offer guidance, the development standards of the applicable Zone shall prevail. Accessory structures shall adhere to the following:

1. Meet the design standards of Section 20.410.050 (Accessory Structure and ~~Accessory Dwelling Unit~~ ADU Design).
2. Shall be limited to uses that are accessory to the main use, including a cabana, garage or carport, gazebo, greenhouse, pergola, pool and/or spa and related equipment, or workshop. An accessory structure shall not be used for dwelling purposes. Bathtub(s), fireplace(s), and/or kitchen (full or partial) facilities are prohibited in accessory structures. Air conditioning, heating, shower, toilet, washtub, and/or washer and dryer facilities are allowed within an accessory structure; however, a deed restriction shall be required and shall state that the accessory structure shall be maintained as an accessory structure and shall not be used for sleeping quarters or be converted to a residential use.
3. Prohibited accessory structures are freight containers, railroad cars, intermodal containers, and similar storage-type structures, unless they are altered to be similar and compatible with the primary dwelling unit.

B. **Accessory Structure(s) Size.** The maximum allowable gross floor area for all completely enclosed accessory structures in conjunction with an existing single-family residence, excluding ADUs, shall be equal to forty percent (40%) of the living area of the primary dwelling unit, or eight hundred (800) square feet of gross floor area, whichever is less. The total gross floor area shall include all accessory structures, including those that do not require a building permit, with the exception of those that are completely open on at least three (3) sides, exclusive of any supporting columns.

C. **Height.** Height of the accessory structure(s) shall be one (1) story maximum, up to a maximum fifteen (15) feet at peak of roof, and shall not exceed the height of the primary dwelling unit.

D. **Location.** The setback requirements of the applicable Zone for the primary structure shall apply to all accessory structures, except as modified below:

1. If detached, a minimum of five (5) feet separation from the primary dwelling unit or any other accessory structure. A breezeway may span the space between the two (2) structures.
2. Accessory structures shall not be permitted within the required rear yard in the Agricultural Zones (A-1, A-2, or A-3), except for permitted fences and walls.
3. Rear property line setback: minimum five (5)-foot setback required.
4. Interior property line setback:
 - a. Consistent with the interior property line setback of the applicable Zone; or
 - b. Equal to the interior property line setback of the existing primary building, whichever is less.
 - c. If located behind the primary building, minimum of five (5)-foot setback to interior property line shall be permitted in the rear yard area.
 - d. Unenclosed patios (i.e., patio covers) attached to the main building shall meet the minimum interior property line setback of the base Zone.

5. Front or Street Property Line Setback: Accessory structures shall not occupy any portion of a required setback from the front property line or any street property line and shall not be closer to the ROW than a dwelling unit.

Section 20.410.050 - Accessory Structure and Accessory Dwelling Unit Design

All accessory structures and shall be architecturally compatible with any existing dwelling unit on the same lot.

1. All accessory structures and accessory dwelling units ADUs shall blend with the existing primary dwelling unit on the lot and neighborhood residences by incorporating the same or similar architectural features, building materials, and color as the primary dwelling unit on the property. These features shall include roofing material, roof design, fascia, exterior building finish, color, exterior doors and windows (including ratios of window dimensions [i.e., width to height] and window area to wall area), garage door, and architectural enhancements. If the accessory structure or ADU does not blend with the existing primary dwelling unit on the lot, the architectural features of the primary dwelling unit may be modified to modernize the structure, as long as the accessory structure or ADU architecturally blends with the modified primary dwelling unit, and both the accessory structure or ADU and the primary dwelling unit blend with neighborhood residences.
2. The exterior design of all accessory structures and accessory dwelling units shall be in harmony with and maintain the scale of the neighborhood. The design of the accessory dwelling unit shall relate to the design of the primary dwelling unit and shall not visually dominate it or the surrounding properties.
3. In no case shall the accessory dwelling unit or accessory structure be located within the required front property line setback, and shall not be closer to the ROW than the primary dwelling, except as expressly permitted under Section 20.410.060.F of this Zoning Ordinance.

Section 20.410.060 - Accessory Dwelling Unit ADU and Junior ADU Requirements

Each A Zone and R-1 Zone parcel meeting the requirements of Section 20.410.020.B (Applicability) shall be permitted the maximum construction of one (1) accessory dwelling unit the parcel, subject to the following requirements: Each parcel that is zoned to allow single-family dwelling residential use meeting the requirements of Subsection 20.410.020D shall be permitted the maximum construction of one (1) ADU and one (1) Junior ADU on the parcel. Each parcel that is zoned to allow multifamily dwelling residential use meeting the requirements of Subsection 20.410.020.D may have a maximum of two (2) detached ADUs, and portions of existing dwelling structures on parcels zoned to allow multifamily dwelling residential use that are not used as livable space, including but not limited to, storage rooms, boiler rooms, passageways, attics, basements, and garages, may be converted into attached ADUs. ADUs and Junior ADUs shall be subject to the following requirements:

- A. **Density** . The state considers accessory dwelling units as ADUs do not exceed the allowable density for the lot upon which the ADU is located, because ADUs are a residential use that is consistent with the General Plan density and Zone for the lot.
- B. **Zoning Compliance**. The shall conform to all land use and development standard provisions of the applicable Zone, including setbacks and separation of buildings, except as expressly permitted under Section 20.410.060.F of this Zoning Ordinance. To the extent conformance would not conflict with State law, the ADU shall conform to all land use and development standard provisions of the applicable Zone, including setbacks and separation of buildings, except as expressly permitted under Subsection 20.410.060.E; provided, however, that rear and side setbacks for a new detached ADU shall be a minimum of four (4) feet.
- C. **Building Code Compliance**. The accessory dwelling unit ADU or Junior ADU shall meet all applicable requirements of the California Building Code.
- D. **Annexation to Community Facilities District**. Accessory dwelling unit ADUs and Junior ADUs shall be subject to annexation to applicable Community Facility Districts, as established by City Ordinance.
- E. **Size and Height Limitations**. The building size for all accessory dwelling units ADUs shall be limited to the smallest square footage applicable to the parcel:
 - 1. Attached. If attached, a maximum of thirty percent (30%) of the total interior habitable square footage of the primary dwelling unit, including a basement and attic, but not including a garage or any accessory structure.
Size of attached ADU shall be:
 - a. The total floor area of an attached ADU shall not exceed fifty percent (50%) of the living area of the proposed or existing primary dwelling, provided, however, that the maximum square footage allowed must be at least eight hundred (800) square feet of gross floor area.
 - b. The total square footage for an attached ADU providing one bedroom shall not exceed eight hundred fifty (850) square feet of gross floor area.
 - c. The total square footage for an attached ADU that provides more than one bedroom shall not exceed one thousand (1,000) square feet of gross floor area.
 - 2. Detached.
 - a. Lots of less than three-quarters (3/4) acre (32,620 square feet): maximum seven hundred fifty (750) square feet of gross floor area permitted.
 - b. Lots 3/4 acre (32,620 square feet) to less than one (1) acre: maximum eight hundred fifty (850) square feet of gross floor area permitted.
 - c. Lots one (1) acre or more: maximum 1,000 square feet of gross floor area permitted.

Size of detached ADU shall be:

- a. Lots of less than one (1) acre: maximum eight hundred fifty (850) square feet of gross floor area permitted, except ADUs that provide more than one bedroom, for which a maximum of one thousand (1,000) square feet of gross floor area is permitted.
- b. Lots one (1) acre or more: maximum one thousand (1,000) square feet of gross floor area permitted.

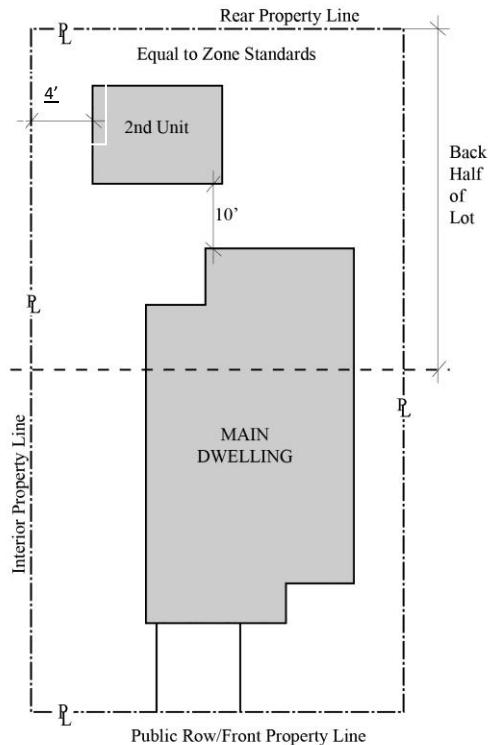
3. Height of ~~detached accessory dwelling unit~~ ADU shall be one (1) story maximum, ~~fifteen (15) sixteen (16) feet at peak of roof, and shall not exceed the height of the primary dwelling unit. and overall height shall remain consistent with the requirements of the applicable Zone in which the ADU is located. For an accessory dwelling unit attached to the existing single family unit, the height shall not exceed the height of the existing structure, and the roof pitch shall match the existing structure. This one (1) story maximum height shall not include the garage if an ADU is built above a garage.~~

4. Size of Junior ADUs:

- a. Junior ADUs cannot exceed a maximum of five hundred (500) square feet of gross floor area.

F. Exterior Access. ADUs and Junior ADUs shall have separate exterior access from the primary dwelling.

Figure 20.410-1 Placement of Accessory Dwelling Units



FG. Location, Setbacks. Except as otherwise provided in Subsections 20.410.060.G.1 and 20.410.060.G.4, a ~~The accessory dwelling unit detached ADU shall be located within the rear fifty percent (50%) of the lot, and shall comply with all setbacks of the applicable Zone required for a single-family residence provided, however, that side and rear setbacks shall be a minimum of four (4) feet.~~ The accessory dwelling unit ADU shall be a minimum of ten (10) feet from any structure on-site (eave to eave).

1. No setbacks are required for an existing garage that is converted to an accessory dwelling units living area or accessory structure that is converted to an ADU or is in the same location and to the same dimensions as the original structure .
2. A setback of five (5) feet four (4) feet from the side and rear lot lines is required for an accessory dwelling unit ADU that is constructed above a garage, not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
3. Except as otherwise provided in Subsections 20.410.060.G.1 and 20.410.060.G.4, an ADU shall not be located within the required front property line setback and shall not be closer to the ROW than the primary dwelling, except that any side or rear setback shall not be required to exceed four (4) feet.
4. No front setback shall be required for one (1) detached, new construction ADU if no other feasible location on the parcel is available, provided that the following requirements are satisfied:
 - a. The ADU has a minimum of four (4) foot side and rear setbacks;
 - b. The total floor area of the ADU does not exceed eight hundred (800) square feet;
 - c. The ADU is a maximum of sixteen (16) feet in height; and
 - d. The location of the ADU will allow access to adequate water and sewer services and will not impact traffic flow or public safety.

GH. Adequate Public Facilities. Adequate public facilities (including water and sewer) and utilities for the accessory dwelling unit ADU must be available or made available at the time of development and shall be sized in accordance with applicable codes. Local agencies with jurisdiction over utilities must provide utilities for the ADU at the time of development.

1. The City may determine that a new or separate utility connection is required to be installed directly between the and the utility. No new or separate utility connection shall be required for any described in Section 20.410.030.C. Local agencies with jurisdiction over utilities shall determine whether a new or separate utility connection is required to be installed directly between the newly constructed ADU and the utility. An ADU that is created within the proposed space of a single-family

~~dwelling or existing space of a single-family dwelling or accessory structure shall not require a new or separate utility connection.~~

2. The County of San Diego Health and Human Services Department must approve any private sewage disposal system that is required under this chapter.
3. ~~The City must obtain a “will serve” letter from all local agencies with jurisdiction over utilities for the ADU prior to the issuance of a building permit for the construction of the ADU.~~

HI. Public Facilities and Utilities Fees.

1. ~~Accessory dwelling units shall not be considered new residential uses for the purpose of calculating connection fees or capacity charges for public facilities and utilities. The City does not assess utilities fees or capacity charges.~~
2. ~~The City may determine that any new or separate public facility or utility connection required under Section 20.410.060.G, above, is subject to a connection fee or capacity charge. No connection fee or capacity charge shall be imposed on any described in Section 20.410.030.C.~~
3. ~~All public fees required by this chapter shall be proportionate to the burden of the accessory dwelling unit ADU on the public facility or utility, shall be based upon either the size of the accessory dwelling unit or the number of plumbing fixtures for the accessory dwelling unit primary dwelling unit, and shall not exceed the reasonable cost of providing the service. No public facilities fees shall be imposed on ADUs smaller than 750 square feet.~~
34. All ~~public facilities~~ fees required by this chapter shall be paid prior to the issuance of any building permit required for the construction of the ~~accessory dwelling unit ADU~~.
- IJ. Owner Occupied and Owner Applicant.** The property owner of the parcel shall be the permit applicant ~~for the ADU~~, shall be living on premises at the time of accessory dwelling unit application and approval, and shall continuously reside on premises in either the primary dwelling unit or the accessory dwelling unit. For ADU applications received prior to January 1, 2020, or on or after January 1, 2025, the property owner shall be living on the premises at the time of the application and approval and shall continuously reside on premises in either the primary dwelling or the ADU. There is no owner occupancy requirement for ADU applications received on or after January 1, 2020 and before January 1, 2025. The ~~accessory unit ADU~~ may be rented but not for less than 31 days. The ~~accessory dwelling unit ADU~~ may not be sold separate from the primary dwelling unit. An ~~accessory dwelling unit ADU~~ may be approved and built at the same time as the primary dwelling unit is approved and constructed. ~~This section shall not apply to Junior ADUs.~~
- JK. Occupancy.** The maximum occupancy of the ~~accessory dwelling unit ADU~~ shall conform to the latest adopted ~~Uniform Housing Code California Building Code~~ and in conformance with residential standards as adopted by the Zoning Ordinance.

KL. Siting. The location and design of the ~~accessory dwelling unit~~ ADU shall not significantly impact the ~~privacy or~~ parking of adjacent properties.

LM. Parking.

1. A minimum of one (1) on-site paved parking space shall be provided for the ~~accessory dwelling unit~~ new ADU, in addition to the required parking for the primary dwelling unit except as provided in Subsection 20.410.060.M.4. The additional parking space(s) shall be a minimum dimension of nine (9) feet by eighteen (18) feet ~~except as provided for in Subsection 20.410.060.L.4 of this Section~~.
2. Offstreet parking is permitted in setback areas in locations determined by the City, or through tandem parking, unless specific findings are made by the City that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions. Parking spaces are subject to the following:
 - a. Parking may be provided on an existing driveway but shall not block sidewalk access or encroach into the public right-of-way.
 - b. No more than thirty (30) percent of a front yard shall be dedicated to vehicle parking.
 - c. Except for an approved driveway, vehicles must be parked on an acceptable all-weather surface, such as brick, permeable pavers or other stable, dust-free surface deemed acceptable by the Development Services Department and Stormwater Division.
3. If a garage, carport or covered parking structure is demolished in connection with the construction of an ~~accessory dwelling unit~~ ADU, ~~those offstreet parking spaces must be replaced~~ the City shall not require that those off-street parking spaces be replaced. However, if a garage, carport or covered parking structure is demolished or converted in conjunction with the construction of an ADU, any pre-existing driveway parking spaces must be maintained. The replacement parking spaces may be located in ~~any configuration on the same parcel as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, tandem spaces, or by the use of mechanical automobile parking lifts~~.
4. No parking standards shall be imposed by the City on an ~~accessory dwelling unit~~ ADU in any of the following instances: (i) ~~the accessory dwelling unit is located within one half mile of public transit (including, but not limited to, a public bus stop, bus station, light rail station, paratransit lot and other areas where public transportation is available)~~; (ii) ~~the accessory dwelling unit is located within an architecturally and historically significant historic district~~; (iii) ~~the accessory dwelling unit is located within an existing primary dwelling unit or an existing accessory structure~~; (iv) ~~on street parking permits are required but not offered to~~

~~the occupant of the accessory dwelling unit; or (v) there is a car share vehicle located within one block of the accessory dwelling unit.~~

- a. The ADU is located within one-half mile walking distance of public transit as defined in California Public Resources Code §21155(b) (a location, including but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public);
- b. The ADU is located within an architecturally and historically significant historic district;
- c. The ADU is located within an existing primary dwelling unit or an existing accessory structure;
- d. On-street parking permits are required but not offered to the occupant of the ADU; or
- e. There is a car share vehicle located within one block of the ADU.

5. No additional parking is required for a new Junior ADU.

~~§6.~~ Required parking spaces shall be kept clear and used exclusively for vehicle parking. Such spaces shall not be used for storage or other uses.

~~MN.~~ **Driveway.** A driveway connection serving both the main and ~~accessory dwelling unit~~ ADU is highly encouraged where feasible.

~~NO.~~ **Emergency Access.** Emergency access and fire apparatus roads shall be provided to the satisfaction of the City of San Marcos Fire Marshal in accordance with the current edition of the California Fire Code.

~~QP.~~ **Fire Sprinklers.** Fire sprinklers may be required for the ~~accessory dwelling unit~~ ADU if required for the primary dwelling unit.

~~PQ.~~ **Community Character.** The ~~accessory dwelling unit~~ ADU shall be consistent with the character, architecture, and density of the existing parcel structures.

~~QR.~~ **Restrictions.** ~~An~~ shall not be permitted on a lot that already contains a guest house, ~~residential care facility, or rooming house, as defined by Chapter 20.600 (Definitions), unless expressly permitted by law. Accessory dwelling units are not allowed in planned residential developments or within the Ridgeline Overlay Zone (ROZ).~~

Ridgeline Overlay Zone Restrictions. ADUs in the Ridgeline Overlay Zone must comply with certain sections of Chapter 20.260, including sections 20.260.050.E (Building Placement, Maximum Height, and Basements), 20.260.050.F (Architecture), 20.260.050.H (Color and Materials), and 20.260.050.J (Fire Fuel Modification), except as prohibited by state law. However, ADUs in the Ridgeline Overlay Zone shall not be subject to any requirements that conflict with the requirements set forth in this chapter.

~~RS.~~ **Deed Restriction.** Prior to the issuance of a building permit for the ~~accessory dwelling unit~~ ADU, a Deed (Land Use) Restriction shall be recorded with the County Recorder that includes all the following:

1. Limiting the total number of ~~dwelling units~~ ADUs on the property to ~~two (2)~~ ~~units as follows;~~
 - a. One (1) ADU and one (1) Junior ADU on a lot that is zoned to allow single-family dwelling residential use; and
 - b. Two (2) ADUs on a lot that is zoned to allow multifamily dwelling residential use.
2. Requiring that one (1) of the dwelling units (main or accessory dwelling unit) shall be owner occupied; and

For an ADU:

- a. Prohibiting the unit from being sold separately, including a statement that the deed restriction may be enforced against future purchasers;
- b. Prohibiting the unit from being rented for a term less than thirty-one (31) days; and
- c. For applications received before January 1, 2020 or on or after January 1, 2025 only, requiring that one (1) of the dwelling units (main or accessory dwelling unit) shall be owner occupied.

3. Prohibiting the units from being sold separately.

For a Junior ADU:

- a. Prohibiting of the sale of the Junior ADU separately from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers;
- b. Restricting of the size of the Junior ADU stating that the maximum permitted gross floor area of the Junior ADU is five hundred (500) square feet;
- c. Requiring that the Junior ADU's independent exterior access shall be retained;
- d. Prohibiting the unit from being rented for a term less than thirty-one (31) days; and
- e. Requiring that one (1) of the dwelling units (main or Junior ADU) shall be owner occupied.

T. Certificate. A Certificate of Occupancy for an ADU or a Junior ADU shall not be issued prior to the Certificate of Occupancy for the primary dwelling unit.

U. 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. “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. “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU.
5. “Public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
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.

Section 20.600.030 – “A” Definition

Accessory Dwelling Unit. An attached or a detached residential dwelling unit that 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 or multifamily dwelling is situated. An Accessory Dwelling Unit also includes the following:

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



City of San Marcos
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San Marcos, CA 92069

ATTACHMENT C

Housing and Community Development (HCD) Comments

ATTACHMENT - C

From: Ayala, Jose@HCD <Jose.Ayala@hcd.ca.gov>
Sent: Monday, July 20, 2020 15:43
To: Brindley, Karen <KBrindley@san-marcos.net>
Subject: RE: Touching base - ADU Ordinance review

Good afternoon Karen,

Thank you for your patience while I received comments from our ADU team lead. Here are a few comments that we had regarding the draft ADU ordinance:

- Sites not zoned for multifamily use would still be allowed ADU's under the multifamily development standards. We want to confirm that on lots with an existing multifamily dwelling, the two detached ADUs and the interior ADUs are allowed.
- Page 5, Section B: The setbacks cannot be required to be more than 4 feet; as currently written, the 'maximum' should be replaced with 'minimum'. ADUs can voluntarily be built further into the property line than 4 feet.
- Page 6, Section G & Page 7, G.3: While most ADUs can be required to comply with a front setback, the exemption ADU and subdivision (e)(1)(B) ADU (800 sqft./16 foot height limit/4 ft. rear setback/4 ft. side setback) can require the front setback to be waived.
- Page 7, Section H.1: Separate and new utilities can only be required if the ADU is new construction (not within existing).
- Page 8, Section L: Standards related to privacy are not allowed in the ADU ordinance. If you feel this will be an issue, we can help craft language to remedy.

Overall, this is one of the better draft ADU ordinances we have seen. As noted before, we are happy to set up a phone call to discuss any of the points (if needed) once you and the team have had an opportunity to review. We'll await your response to keep moving forward. Thank you again for the opportunity to review the draft.

Sincerely,



Jose Ayala

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