



Accessory Dwelling Units (ADUs)

(Regulation update by the California State Legislature - Effective January 1, 2017)

Q: What regulations were updated?

A: The State of California adopted State and Assembly Bills that significantly reorganized and modified the second dwelling unit standards of the Government Code known as second unit law. The state now refers to second units or “granny units” as Accessory Dwelling Units (ADUs). These changes to state code became effective on January 1, 2017, making the City’s adopted second unit ordinance null and void.

Q: Why did the state change the regulations?

A: Modifications in state law in the 1980’s and in 2002 were intended to promote the development of ADUs; however, in 2016 the state legislature found that despite state efforts to encourage ADUs, many local governments continued to pass ordinances that constrained their construction. The legislature concluded that a more prescriptive approach is required to remove barriers to the creation of ADUs.

Q: Does the City have control over any of the ADU zoning standards?

A: Overall, the amendments to the Government Code substantially reduce the discretion of local governments to regulate ADUs. In many cases an ADU would now be allowed ministerially (with no discretionary review) and with only a building permit. The City may limit ADUs to residentially zoned properties with a main unit on site, and require objective design standards and compliance with development criteria for additions to homes (within limits). The City may also require additional parking for ADU additions (within limits).

With adoption of an ADU Ordinance, the City may require owner occupancy of one unit on site, and may restrict short term rentals. The City may also require replacement parking for converted garages by ordinance. Other modifications to the state standards could be made by ordinance, including the collection of fees, and the reduction in the maximum size of ADU additions; however, the City could not adopt an ADU Ordinance with provisions that are so arbitrary, excessive, or burdensome that they unreasonably restrict the ability of homeowners to create ADUs.

Q: What is the definition of an ADU?

A: An ADU is a secondary dwelling unit with complete independent living facilities for one or more persons (i.e., permanent provisions for living, sleeping, eating, cooking, and sanitation); it generally takes three forms:

- ▶ *Detached*: The unit is separated from the primary structure



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- *Attached:* The unit is attached to the primary structure
- *Interior:* The unit is comprised of existing space within the primary residence or an accessory structure (i.e., a guest bedroom is converted into an independent living unit).

Note: An ADU may consist of an efficiency unit, as defined in Section 17958.1 of Health and Safety Code (minimum of 150 sq. ft.); or a manufactured home, as defined in Section 18007 of the Health and Safety Code.

Q: What is a Junior ADU?

A: The Junior ADU (JADU) was established by AB 2406 (adding Government Code Section 65852.22). The JADU is an *optional* way for local jurisdictions (cities and counties) to promote the creation of smaller, cost-efficient, and more affordable ADUs by allowing property owners to take advantage of underutilized space within their home. JADUs must be within the interior of existing home space and no greater than 500 square feet. JADUs could be studio units (bedrooms with a kitchenette) 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 basic cooking facilities, including a sink, but does not require a private bathroom.

Belmont has not adopted a JADU ordinance. Current law does not prohibit the city from adopting an ordinance for a JADU, and AB 2406 explicitly allows, not requires, the City to do so. If the City does adopt a local JADU ordinance and requires a permit, additional parking or fee charge for a water or sewer connection cannot be required as a condition of granting approval of the JADU. AB 2406 also 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 detectors. Owner occupancy can be required.

Q: Can an ADU be sold or rented? Does the owner need to occupy one of the units?

A: An ADU cannot be sold separately from the main unit on site, but may be rented. The changes to State law do not require owner occupancy or restrict short term rentals; however, State law does allow the City to adopt an ADU Ordinance that requires owner-occupancy and prohibits short-term rentals (terms less than 30 days) for either the main unit or ADUs. If the City adopts such an ordinance, applicants for ADU's could be required to record a covenant in a form approved by the city to notify future owners of owner occupancy and rental requirements.



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Q: Where are ADUs allowed? How many can be built on a lot? Is there a minimum lot size?

A: Per state law, an ADU is allowed on any single-family or multi-family residentially zoned lot that has a single family home, including Single Family Residential (R-1), residential Planned Developments (PD), and Hillside Residential and Open Space (HRO). Only one ADU can be built on a lot. No minimum lot size was provided in the state law, but the City could specify a minimum lot size with adoption of an ADU ordinance. The City's previously adopted minimum lot size was 5,000 square feet (now null and void).

Q: What are the maximum sizes for the different types of ADUs?

A: If all applicable development standards can be met (i.e., the total floor area allowed for the property, setbacks, height, etc.), the maximum unit sizes are as follows:

- ▶ *Attached:* Up to 50% of the living area of the existing home (living area includes basement, but not garage or accessory structures) or 1,200 sq. ft., whichever is less.
- ▶ *Detached:* Up to 1,200 sq. ft. (not dependent upon percentage of main unit).
- ▶ *Interior:* No maximum size and not subject to maximum floor area limitations, except for a JADU (500 sq. ft.)

Q: What are the applicable development standards for attached and detached ADUs (i.e., ADUs that include additions)?

A: The development standards would be dependent on the underlying zoning district. State law allows the city to enforce all of the requirements of the underlying residential zoning district and any applicable overlay district for ADU additions. This includes, but is not limited to: height, setback, floor area ratio, Residential Design Criteria (RDC), and historic preservation requirements. Exceptions to these requirements are as follows:

- The ADU is contained in a nonconforming structure and does not expand the nonconformity.
- For newly constructed ADUs above a garage, setbacks from the side and rear lot lines shall be the lesser of such setbacks as required by the Zoning Ordinance or five feet. It should be noted that the City has a 15-foot height limit for detached accessory structures.



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Q: What are the applicable development standards for interior ADUs?

A: 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 including locational requirements, subject to usual non-appealable ministerial building permit requirements. State law makes clear that ADUs in existing space do not necessitate a zoning clearance and may not be subject to the development criteria of the underlying zoning district (i.e., height, lot size, lot coverage, total floor area, unit size, architectural review, landscape or parking requirements). State law requires the City to approve interior ADUs when the following standards are met:

- The ADU is located entirely within an existing and legally created space of a single-family home or accessory structure that is within a single-family residential zone
- The ADU has independent exterior access from the existing residence
- The ADU has side and rear setbacks that are sufficient for fire safety

Note: State Law provides that no setbacks may be required for an existing garage that is converted to an ADU, including when existing space (workshop, storage, etc.) above or adjacent to a garage is converted to an ADU.

Q: What are the parking standards for ADUs?

A: State mandated parking standards vary by the type of ADU, as provided below.

Interior Units

The City may not require additional parking for interior ADUs; however, when an existing garage, carport or covered space is demolished in conjunction with the construction of an ADU and the city requires replacement parking by ordinance, the replacement parking may be located on the same lot in any configuration that is permitted for accessory dwelling unit parking, including tandem parking on an existing driveway and/or parking in setback areas (unless not feasible due to fire or life safety issues); parking may be covered, uncovered, tandem, or via a mechanical lift.

Attached & Detached Units

State Law allows the City to require up to one parking space per unit or per bedroom for a newly constructed ADU without adoption of an ADU Ordinance; parking may be provided in



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tandem on an existing driveway and/or in setback areas (unless not feasible due to fire or life safety issues); however, the city may not impose parking standards for an ADU in any of the following circumstances:

- ▶ The ADU is located within ½ mile of public transit (bus or train stop)
- ▶ The ADU is located within an architecturally and historically significant historic district
- ▶ The ADU is part of the existing primary residence or an existing accessory structure
- ▶ The ADU is located in an area with on-street parking permits that would not be offered to the ADU occupant
- ▶ The ADU is located within one block of car share

Q: What fees are required for ADUs?

State law 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 state prohibits the City 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 (Interior Units).

The City may adopt an ADU Ordinance that allows for the collection of fees for attached and detached ADUs (utilities, park impact, etc.); however, the fees collected under a City ADU Ordinance must be proportionate to the burden of the unit on the utility system (i.e., water or sewer system) and may not exceed the reasonable cost of providing the service. Similarly, park impact fees would need to be proportionate to the impact of a smaller unit (i.e., not the same as the fees for a new single-family home).

Q: Do ADU additions (attached and detached units) require Architectural Review?

A: The City's adopted Second Unit Ordinance is null and void, and the new state law includes only provisions for ministerial ADUs (i.e., units permitted without discretionary review where subjective findings are required to be affirmed, such as Single-family Design Review or Conditional Use Permit); however, the changes to state law indicate that the City may impose the Development Criteria for the underlying zoning district and Architectural Review. Thus, the City may impose objective design standards applied to all residential properties, as provided below.



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Design Standards for ADUs (attached and detached units)

ADU additions shall comply with the following design standards:

- ▶ ADU additions must comply with the Residential Design Criteria (RDC) if the new construction includes: 1) ground floor plate height exceeds 12 feet or roof height exceeds 18 feet (as measured from finished grade); or 2) creates or expands an upper floor.
- ▶ ADUs shall be constructed with facade materials identical in color, and similar in texture and appearance to the primary dwelling, including but not limited to roofing, siding, and windows and doors.
- ▶ ADUs shall match the roof pitch/form of the primary dwelling in order to blend with the architecture of the primary dwelling.

Q: What is the process for approval of an ADU?

A: ADUs that meet state standards, are ministerial (may be approved without discretionary review); however, applicants need to prepare an application with sufficient information to demonstrate compliance with state standards, and apply for a building permit (when applicable).

Planning staff is in the process of preparing specific application materials for the different types of ADUs; these submittal requirements may change if the City elects to adopt an ADU Ordinance. Upon submittal of an application, planning staff would evaluate the project for compliance with state standards and/or adopted city standards. Staff anticipates collecting a fee to cover from two-four hours of staff time (depending on the complexity of the project).