



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: December 18, 2019

Approved

D. DSYL

Date

12/19/19

**SUBJECT: CITY COUNCIL PRIORITY #7: ACCESSORY DWELLING UNIT
AMNESTY PROGRAM**

RECOMMENDATION

- (a) Accept the staff analysis and recommendation to establish an Amnesty Program for unpermitted accessory dwelling units; and
- (b) Determine that City Council Policy Priority #7 is completed and will be removed from the Council Policy Priority list at the next priority-setting session in 2020.

OUTCOME

Accepting staff's recommendation will establish an amnesty program for accessory dwelling units (ADUs) will complete the policy work outlined in City Council Priority #7, *Accessory Dwelling Units & Garage Conversion Ordinance*, including removal of the item from the City Council Policy Priority List.

EXECUTIVE SUMMARY

Pursuant to Council direction on September 24, 2019, staff conducted additional analysis and reported initial findings on the following items at the November 14, 2019 Ad Hoc Committee for Housing Construction and Development Services, including:

- A cost assessment of reducing financial barriers to bringing ADUs up to Code;
- The legal and practical feasibility of a third-party inspector approach, similar to the San Mateo County program;
- The possibility of limiting the scope of inspections to the ADU only, rather than the entire property;
- A list of the most hazardous violations of the Building Code and/or Health and Safety Code found in unpermitted ADUs;

- Resources that could offer low-cost or low-interest renovation loans or grants; and
- Potential Zoning Code requirements that could be waived as part of an ADU Amnesty Program.

Staff is also developing a self-assessment checklist for homeowners to assess the characteristics and conditions of their unpermitted ADU. Additionally, on December 17, 2019, the City Council unanimously approved proposed Zoning Ordinance amendments, including allowing Junior ADUs and eliminating minimum lot size requirements, to align with new state law.

With Council approval of this item, staff anticipates launching the ADU Amnesty Program in January 2020 and bringing forward during the 2019-2020 Mid-Year Budget Review a request for initial costs. Staff anticipates bringing forward a proposal during the 2020-2021 budget process to request ongoing resources to continue the program into next year.

BACKGROUND

The City Council originally proposed an amnesty program for Accessory Dwelling Units (ADUs) and Garage Conversions in 2016. The Council adopted this proposal as a City Council Policy Priority on March 7, 2017; it is currently ranked #7 on the Council Policy Priority List. The Council adopted two major sets of updates to the ADU Ordinance in November 2016 and June 2018. A third series of updates were approved unanimously by Council on December 17, 2019.

On September 24, 2019, staff provided an analysis and recommended that the City pursue Path B “Legally Permit ADUs for Year Built” for an ADU Amnesty Program. Council accepted staff’s analysis and recommendation and further directed staff to:

1. Conduct additional analysis and return to the Ad-Hoc Committee for Housing Construction and Development Services and Council with a report that:
 - a. Assesses cost to the City the financial barriers to bringing ADUs up to code, including:
 - i. Waiving business license taxes for all owner-occupied properties with a permitted accessory dwelling unit;
 - ii. Reducing or waiving permit and impact fees.
 - b. Explores the legal and practical feasibility of an approach:
 - i. Similar to San Mateo County’s, to hire third-party inspectors for an amnesty program that are not obligated to report to the City any code violations, but can properly advise property owners about how to comply with code and safety requirements.
 - ii. To require City inspectors to limit the inspection scope to ADUs only, to avoid “opening the door” to a costly list of violation notices.

December 18, 2019

Subject: ADU Amnesty Program

Page 3

- c. Identifies the most hazardous building health and safety code violations for inhabitants of unpermitted ADUs, based on data from the Fire Department and other sources;
 - d. Identifies any readily apparent state, federal and non-profit resources that could offer low-cost or low-interest renovation loans or grants for bringing detached accessory dwelling units and converted garages up to code;
 - e. Identifies any zoning requirements—such as setbacks, heights, rear yard coverage, and the like—that can be waived as part of an amnesty program, where there are no recorded complaints from the neighborhood about the condition or appearance of the ADU.
2. Direct staff to develop and provide a self-assessment checklist for homeowners to assess the characteristics and conditions of their unpermitted ADU.
 3. Direct staff to amend the Secondary Unit Ordinance to allow Junior ADUs under 500 square feet and allow uncovered replacement parking when a garage is converted to a Junior ADU.

Pursuant to Council direction, staff provided a verbal report on the above-items to the Ad Hoc Committee for Housing Construction and Development Services at its November 14, 2019 meeting.

ANALYSIS

New State Laws on ADUs

Since the September 24, 2019 Council Meeting, several State bills regulating ADUs (including garages converted to ADUs and Junior ADUs) were signed into law by the Governor on October 9, 2019, with an effective date of January 1, 2020. See *Attachment A* for a summary.

Response to City Council Direction on September 24, 2019

1. Cost Assessment of Reducing Financial Barriers

Waiving Business License Taxes

Under the San José Municipal Code, Sections 4.76.400-470, the business tax for renting or leasing one to two units of residential property is \$200.85 annually. However, property owners who meet either of the following criteria can apply for a Financial Hardship Exemption that provides a waiver of the business tax:

- 1) Low revenue generating business with gross receipts below two times the poverty level (Section 4.76.345); or

- 2) Limited household income with adjusted gross income below four times the poverty level (Section 4.76.345.5).

Staff research shows the average ADU rent in the South Bay area is approximately \$1,850 per month for a total of \$22,200 annually. Two times the current poverty level would equate to \$24,980 with a maximum monthly rent of \$2,081. Thus it appears that most property owners with an ADU rental could qualify for the low revenue generating small business Financial Hardship Exemption already in place. Thus, staff intends to encourage applicants to apply for the Financial Hardship Exemption as part of the Amnesty Program and will include information about the exemption in outreach materials.

Reducing or Waiving Permit and Impact Fees

Currently, when the owner of an unpermitted ADU seeks to bring the unit up to code, they must obtain building permits and pay outstanding taxes and fees. Per Council direction, staff explored waiving or reducing business tax and permit and impact fees.

As of January 1, 2020, SB 13 waives impact fees, such as park fees, for the construction of an ADU that is less than 750 square feet, which will likely provide significant cost savings for customers applying for permits for Amnesty units that meet this threshold. As another added cost savings, staff recommends waiving the unpermitted construction penalty fee (equivalent to the amount of the permit fee) for ADU Amnesty customers.

Staff also evaluated the cost of waiving ADU permit fees based on the number of potential ADU Amnesty units in the program as shown in **Attachment B** to this memorandum. Based on the current building fee schedule for new ADUs, staff estimates a cost of up to \$5,862 in plan review and permit fees per ADU unit could be waived. The total cost to waive permit fees would be dependent on the volume of ADU Amnesty permit applications. Staff estimates approximately 50 ADU Amnesty permit applications from program launch in January 2020 through the end of the fiscal year and approximately 100 ADU Amnesty permit applications for Fiscal Year 2020-2021, for total permit costs of approximately \$293,000 and \$586,200 respectively. Should Council desire to waive the permit fees, a funding source would need to be identified, as the development services function is required to be cost recovery.

Staff also identified resource needs to launch and facilitate the program from January 2020 through the remainder of the fiscal year. Staff will put forward during the 2019-2020 Mid-Year Budget Review a request for initial costs and a proposal during the 2020-2021 budget process to request ongoing resources to continue the program.

2. Third Party Inspections and Inspection Scope

Staff explored the potential role of third party inspectors in the Amnesty Program and the ability to limit the scope of their inspection to the ADU only (rather than the entire property). Staff has determined that the City can utilize a third party consultant to conduct inspections and provide

other functions of the program such as plan check or customer assistance and consultations. While inspectors will focus the scope of their inspections to the ADU only, if an inspector sees any life/safety issues on the property, they will still be required to report these life/safety issues to the City so that proper follow up and remedies can occur.

Health and Safety Violations

As Council requested, staff evaluated the most potentially imminent hazards to health and safety most likely to occur with unpermitted ADU units. Based on existing San Jose Municipal Code, 17.20.900 Substandard Housing-Defined, staff developed a list of items that represent imminent hazards to health and safety that must be addressed in all Amnesty ADUs. The list includes:

1. Hazardous wiring;
2. Structural hazards;
3. Inadequate Fire protection/exits;
4. Lack of sanitation/water; and
5. The presence of gas appliances in sleeping rooms.

3. State, Federal, and Non-Profit Financial Resources

While there is significant information available on building an ADU (including the California Department of Housing and Community Development website and from the Housing Trust Silicon Valley), staff found no federal, state, or non-profit resources currently available for ADU amnesty. Existing government and non-profit resources primarily focus on other reconstruction needs such as post-disaster restoration, elderly populations, and low-income residents. Other municipalities, by comparison, encourage property owners to make use of private financial options such as renovation or home equity loans.

Under AB 671, which takes effect January 1, 2020, the California Department of Housing and Community Development is required to develop, a list of state grants and financial incentives for ADU development by December 31, 2020. Staff will continue to monitor new opportunities for State funding.

4. Self-assessment Checklist and Zoning Ordinance Amendments

Staff is developing a self-assessment checklist for homeowners to assess the characteristics and conditions of their unpermitted ADU; the checklist will be available for the launch of the ADU Amnesty Program.

To remove barriers for the construction of new ADUs, encourage Amnesty Program participation, broaden Amnesty Program eligibility requirements, and align the Zoning Ordinance with the new state ADU regulations, staff brought forward Zoning Ordinance updates to Council on December 17, 2019. The updates, which Council unanimously approved, include:

- 1) Allowing Junior ADUs;
- 2) Eliminating minimum lot size requirements;

- 3) Eliminating replacement parking space requirement for single family dwellings where a parking structure is converted or demolished for construction of an ADU; and
- 4) Allowing at least an 800 square foot ADU regardless of rear yard coverage.

CONCLUSION

An ADU Amnesty Program will provide a viable pathway for residents to make their existing unpermitted ADUs (including garages converted to ADUs and Junior ADUs) safer while expanding the legal housing stock in San José. The program design provides customers an affordable and efficient path to legalize unpermitted ADU units and also ensures the safety of the unit, property, and its inhabitants.

EVALUATION AND FOLLOW-UP

Following Council approval of the ADU Amnesty Program, staff will begin to implement the program in January 2020. Staff will include updates on the ADU Amnesty Program as part of the standing ADU Update agenda item of the Ad Hoc Committee for Housing Construction and Development Services. Staff will also develop a robust ADU Amnesty Program promotion plan to inform the community. Staff will put forward during the 2019-2020 Mid-Year Budget Review a request for initial costs and a proposal during the 2020-2021 budget process to request ongoing resources to continue the program. Staff recommends that this item be removed from the Council Priority List whereas approval of this program will conclude policy development activity for Council Policy Priority #7, *Accessory Dwelling Units & Garage Conversion Ordinance*.

CLIMATE SMART SAN JOSE

The recommendation in this memo aligns with one or more Climate Smart San José energy, water or mobility goals.

PUBLIC OUTREACH

Staff collaborated with the Housing Trust Silicon Valley for early considerations in the design of an ADU amnesty program.

COORDINATION

This item has been coordinated with the City Attorney's Office, Fire Department, City Manager's Budget Office, and Department of Parks, Recreation, and Neighborhood Services.

HONORABLE MAYOR AND CITY COUNCIL

December 18, 2019

Subject: ADU Amnesty Program

Page 7

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, PP17-007, preliminary direction to staff and eventual action requires approval from decision-making body.

/s/

ROSALYNN HUGHEY, Director
Planning, Building, and Code Enforcement

For questions, please contact Rachel Roberts, Deputy Director of Code Enforcement, at (408) 535-7719.

Attachments:

- A. New State Laws Regarding ADUs
- B. ADU Amnesty Program Cost Estimate

ATTACHMENT A: NEW STATE LAWS REGARDING ADUs

The following new State laws regarding ADUs take effect on January 1, 2020.

AB 68 (Ting) & AB 881 (Bloom)

Focus: Processing Times, Ordinance Prohibition and Triplexes

These two bills require cities to either approve or deny an ADU project within 60 days of receiving a complete building permit application on a ministerial (CEQA-exempt) basis. The new laws also prohibit cities from adopting ADU ordinances that: impose minimum lot size requirements for ADUs; set certain maximum ADU dimensions; require replacement of off-street parking with a “garage, carport or covered parking structure” if a garage, carport, or parking structure is demolished or converted to construct the ADU.

The new laws allow construction of an ADU as well as a Junior ADU where certain access, setback and other criteria are met. They also allow ADUs to be constructed in multifamily buildings, including using storage rooms, boiler rooms, etc., so long as building standards are met.

Under AB 881, a property owner can request a delay of enforcement of ADU building standard violations if the following criteria is met:

- a) The unit was built before January 1, 2020; or
- b) The unit is built after January 1, 2020 but before the local municipal code has been amended to align with current state regulations. (Note: the City Council approved amendments to the San José Municipal Code on December 17, 2019 to align with the state regulations.)

Under the new law, the local enforcement agency is to grant the request for delay of enforcement if it is determined that correcting the violation is not necessary to protect health and safety. In San José, the local enforcement agency is the Department of Planning, Building and Code Enforcement.

SB 13 (Wieckowski)

Focus: Owner-Occupied Prohibitions and Fee Limitations

This new law provides, until January 1, 2025, that cities may not conditionally approve ADU building permit applications on the applicant being the “owner-applicant” of either the primary dwelling or the ADU. Additionally, cities cannot impose impact fees on ADUs under 750 square feet.

AB 587 (Friedman)

Focus: Separate Conveyance of ADUs

Under this new law, local agencies may now allow ADUs to be sold or conveyed separately from a primary residence if certain conditions are met. This law is expected to increase the ability of affordable housing organizations to sell deed-restricted ADUs to eligible low-income homeowners.

AB 670 (Friedman)

Focus: Homeowner Association (HOA) Limitations

This new law prevents HOAs from barring ADUs. It makes unlawful any HOA condition that “prohibits or unreasonably restricts” the construction of ADUs on single-family residential lots.

AB 671 (Friedman)

Focus: Local Government Assistance

Under AB 671, local governments must include in their General Plan housing elements plans to incentivize and promote the creation of affordable ADUs. This new law includes additional requirements and limitations for the housing inventory in the housing element and requires various actions, including rezoning, to occur within a specified time of adoption of the housing element if housing inventory does not include adequate sites. The law also requires the California Department of Housing and Community Development to develop, by December 31, 2020, a list of state grants and financial incentives for ADU development.

Staff has proactively taken steps to align the Zoning Ordinance with the new state laws through ordinance amendments which the City Council unanimously approved on December 17, 2019.

ADU AMNESTY PROGRAM COST ESTIMATE*

	ADUs ≤ 750 SF	ADUs > 750 SF
New ADU Plan Review Fees:		
Building Plan Review Fee	\$892	\$1,530
Planning Review Fee	\$145	\$145
PW Review Fee (\$155/hr)	\$78	\$78
GP Update Fee Plan Review + Planning	\$124	\$200
Fire Review	\$239	\$239
Addressing	\$372	\$372
Plan review total (minimum**)	\$1,850	\$2,564
New ADU Building Permit Fees		
Building Permit Fee	\$1,435	\$2,088
GP Update Fee Permit (11.97% of BMPE permit)	\$172	\$250
Fire Permit Fee	\$269	\$269
Processing and Issuance	\$186	\$372
Record Retention (10% of BMPE permit)	\$144	\$209
CDD Review	\$110	\$110
Permit total (minimum**)	\$2,315	\$3,298
Total New ADU Permit Fees (Plan Review and Building Permit)	\$4,165	\$5,862
Total Permit Fee X	Estimated # ADU Amnesty Units	Total
\$5,862 X	50 ADU Amnesty Units (6-month estimated applications)	\$293,100
\$5,862 X	100 ADU Amnesty Units (Annual estimated applications)	\$586,200

*Fees based on FY 19-20 PBCE Building Permit Fee Schedule

**This is the minimum total, based on the minimum plan review/permit fees charged. Any time beyond the time included in the minimum fee amount is charged hourly to the applicant.

Total Program Startup Costs	Personal Services (PS) or Non Personal (NP)	6-Months (January - June 2020)
Overstrength Analyst I/II - ADU Amnesty Ally	PS	\$69,000
Overstrength Code Enforcement Building Inspector	PS	\$114,000
Outreach non-personal	NP	\$20,000
Permit Fee Application Waivers	NP	\$293,000
Program total		\$496,000