

# STAFF REPORT



## COMMUNITY DEVELOPMENT

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**DATE:** October 17, 2023

**TO:** Justin Hess, City Manager

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**SUBJECT:** Introduction of an Ordinance Amending Title 10 of the Burbank Municipal Code Pertaining to the Development Standards for Accessory Dwelling Units and Junior Accessory Dwelling Units in all Single-Family and Multi-Family Residential Zones, and on any Lots with Proposed or Existing Single-Family or Multi-Family Uses

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### **RECOMMENDATION**

Introduce AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURBANK AMENDING TITLE 10, CHAPTER 1 (ZONING) OF THE BURBANK MUNICIPAL CODE TO UPDATE THE EXISTING DEVELOPMENT STANDARDS FOR ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS IN ALL SINGLE-FAMILY AND MULTIFAMILY RESIDENTIAL ZONES, AND ON ANY LOTS WITH PROPOSED OR EXISTING SINGLE-FAMILY OR MULTIFAMILY USES TO ENSURE CONSISTENCY WITH STATE LAW (ATTACHMENT 1).

### **BACKGROUND**

Housing shortages have been identified as an issue of statewide significance by the State of California. State Laws including Senate Bill (SB) 897 and Assembly Bill (AB) 2221 (collectively, “State ADU/JADU Laws”) are examples of multiple approaches the California Legislature has taken to streamline the production of housing. On December 13, 2022, the City Council adopted an Urgency Ordinance (Attachment 3) that established interim Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) development standards that are consistent with State ADU/JADU Laws. The Urgency

Ordinance was extended on January 27, 2023, continuing the interim ADU/JADU development standards until December 12, 2023, in order to give the City additional time to study more permanent updates to the City's ADU/JADU development standards.

The State ADU/JADU Laws amended California Government Code Sections 65852.2, 65852.22, and Health and Safety Code Section 17980.12, and added California Government Code Section 65852.23 (Attachment 4). Amongst other provisions, the recent amendments modified statewide regulations for ADU and JADU development standards and controls that include, but are not limited to:

- increasing the maximum height limits from 17 feet to 18 feet (or in some instances 20 feet) for certain ADUs,
- requiring that local ordinances only impose objective development standards on ADUs, allowing construction of ADU's in the front yard setback where construction of certain backyard ADUs is otherwise infeasible,
- prohibiting denial of an ADU due to the correction of a nonconforming zoning conditions, building code violations or unpermitted structures,
- and other procedural requirements.

A more detailed explanation of the changes to State Law and the proposed amendment to the City's current ADU ordinance are provided in the discussion section of the August 28, 2023 Planning Commission report (Attachment 6). These amendments to the State ADU/JADU Laws became effective on January 1, 2023.

The adopted Urgency Ordinance temporarily reconciled inconsistencies between the City's local ADU/JADU development standards, and the amended State ADU/JADU Laws. Before the extension of the Urgency Ordinance expires and leaves the City susceptible to legal challenges to the validity of the City's local ADU/JADU development standards, the proposed Zone Text Amendment (ZTA) should be considered to preserve local control over ADU and JADU development within the City and avoid the imposition of otherwise-applicable statewide development standards for local ADUs and JADUs.

## **DISCUSSION**

Pursuant to California Government Code Section 65852.2, local ordinances that fail to meet the requirements of State ADU/JADU Laws may be considered null and void in their entirety, and the local jurisdiction will thereafter be limited to only applying State Law standards without local refinements to all local ADU and JADU development projects. The proposed ZTA would provide updated City procedures and development standards for ADUs and JADUs that are consistent with State Law. The proposed ZTA will protect the City from legal challenges to the validity of its ADU regulations by ensuring that the City's ADU/JADU development standards are consistent with current State Law. Furthermore, the proposed ADU/JADU regulations help maintain as much local control as permitted under the law in regulating these projects.

Most notably, the changes to the State ADU/JADU laws impose increased ADU height limits in lots within a half-mile of high-quality transit corridors and major transit stops (shown in Attachment 5) and the allowance of ADUs within the front yard if it is physically

infeasible to place an ADU in the backyard. To address these changes, the proposed ZTA includes development standards that are consistent with State ADU/JADU Laws by:

1. removing the existing 12-foot top plate height limit and allowing for two-story detached ADUs, and imposing a standard that would double-count areas within ADUs that exceed 12 feet in interior height towards the maximum ADU square footage; and
2. establishing a process for approval of front-yard ADUs in limited circumstances when applicants provide site plans exhibiting that an ADU cannot be built in the rear yard under applicable development conditions.

To encourage rear-yard ADUs, the process would expand the development scenarios under which an ADU could be placed in the backyard by reducing the rear and side-yard setbacks to as low as 2 feet to increase feasibility of such backyard placement (and thereby preclude front-yard placement) and establish a development standard that would limit ADUs in the front yard to 800 square feet. In both circumstances, applicants would be required to maintain the largest feasible rear, side, or front-yard setbacks.

Finally, State ADU/JADU Laws provide that code compliant ADUs and JADUs must be allowed on any lot that includes a single-family dwelling unit, and ADUs must also be allowed on lots containing multifamily dwelling units. The BMC currently allows ADUs and JADUs in residential zones. However, because of recent changes to State Law allowing multifamily residential developments in certain nonresidential zones, as well as the existence of a small number of legal nonconforming single family residential dwellings in nonresidential zones, the proposed ZTA updates the use table for nonresidential zones to include ADUs and JADUs in certain areas.

### PLANNING COMMISSION RECOMMENDATION

The Planning Commission considered the proposed ZTA and Ordinance during a noticed regular public hearing on August 28, 2023. After reviewing the staff report (Attachment 6), receiving staff's presentation, public testimony, and Planning Commission deliberation, the Planning Commission was able to reach a consensus resulting in a 4-0 vote recommending approval of the proposed Ordinance.

During the public hearing, Commissioner Robert Monaco expressed opposition to having ADUs being built in the front of houses as this may create safety concerns. However, it was clarified at the meeting that the front-yard ADU mandate is imposed by the State Law. During the Planning Commission meeting, and as previously described in this report, the Commissioners acknowledged the proposed ZTA regulations to incentivize back-yard over front-yard ADU construction, including the creation of a larger building envelope for people to construct ADUs in the rear instead of the front yard. A complete record of the meeting and the Commission's discussion are summarized in Attachment 7.

### PUBLIC OUTREACH AND INPUT

To ensure members of the public had the opportunity to learn more about the ZTA and provide feedback and/or suggestions to the City as part of the review process, staff conducted a virtual community meeting on July 12, 2023, followed by a second community meeting on September 27, 2023. Notifications for the community meetings

were distributed through a newspaper of general circulation, the City's social media platforms and public calendar, and the Planning Division's website. In addition to the community meetings, staff also individually met with members from the public who were not able to attend the community meetings but had previously expressed to staff or other City representatives a desire to discuss the project. Some concerns that were expressed by the community were regarding housing affordability, parking congestion, and ADUs located in the front yard.

One member of the public recommended a strategy to address the issue of housing affordability by monitoring ADU rental revenue using data tracking to investigate who was receiving the rental payments in an effort to ensure affordable housing equity. However, the City does not collect such data for any type of rental property. In response to multiple questions about parking, staff clarified to members of the public that State Law does not require on-site parking for ADUs if such ADU/JADU can meet one of the exceptions provided for under the law. Although the State ADU/JADU Laws preclude most parking regulations, staff was able to inform members of the community that they could reach out to other staff in the Transportation Division to inquire about the process for the consideration of a neighborhood protection plan or permit parking for certain neighborhoods.

Other community members recommended creating incentives to encourage people to build new detached ADUs instead of converting existing garages to maintain onsite parking or install hardscaping to provide parking for the ADU. One way to incentivize people to build new parking for ADUs is to allow additional square-footage for the ADU beyond the allowed maximum square footage if an additional onsite parking space is voluntarily provided. In doing so, these incentives may help mitigate parking impacts to existing on-street parking. As a result, the ZTA proposes up to an additional 120 square feet to the maximum size of one ADU when the proposed development includes providing additional onsite parking beyond what is otherwise required, which would be subject to a covenant that ensures preservation of the provided parking spaces through future development of the subject lot. To further incentivize onsite parking, the proposed ZTA also clarifies that a new curb cut and driveway may be installed on property as long as a minimum parking dimension of 18 feet deep and 8 feet 6 inches wide can be provided.

### **ENVIRONMENTAL ASSESSMENT**

Pursuant to California Public Resources Code (PRC) Section 21080.17, adoption of the Zone Text Amendment and Ordinance is exempt from the California Environmental Quality Act (CEQA). Under PRC Section 21080.17, CEQA does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.2 of the Government Code (State ADU law). The ZTA implements California Government Code Sections 65852.2 and 65852.22 within the City of Burbank in a manner that is consistent with the requirements of State ADU/JADU Laws. As such, the proposed ZTA and Ordinance is exempt from CEQA.

### **FISCAL IMPACT**

Approval of the proposed ZTA and adoption of the proposed Ordinance will not impact the City's General Fund. Applications for all proposed ADU/JADUs will be subject to the City's Fiscal Year 2023-2024 Fee Schedule.

The proposed ZTA will allow more flexibility for property owners to create additional housing opportunities for the community. This will increase the number of building permit applications received by the City; however, the cost to review these applications is recovered through fees paid by the applicant, including consultants used for the permit review process. Proponents of future developments would be required to pay the associated development impact fees as well as any required infrastructure connection and maintenance fees.

Lastly, as residents upgrade their properties with ADUs or JADUs, their properties will be reassessed at a higher valuation and therefore increasing property tax.

### **CONCLUSION**

The changes outlined in the proposed ZTA are intended to resolve inconsistencies between the City's local ADU/JADU development standards and the amended State ADU/JADU Laws. Without the adoption of the proposed ZTA, the City may be vulnerable to legal challenges of its ADU/JADU regulations due to potential inconsistencies with current State ADU Law. The proposed ZTA will facilitate ongoing responsible development of new housing units, which will create new housing opportunities and building types to meet the City's Regional Housing Needs Allocation (RHNA) while putting in place development standards as allowed under the law which help preserve and protect the character of existing residential neighborhoods and maintains as much local control as allowed under applicable regulations.

### **ATTACHMENTS**

Attachment 1 – Ordinance

Attachment 2 – Proposed Redline Changes to BMC

Attachment 3 – Urgency Ordinance Nos. 22-3,987 and 23-3,988

Attachment 4 – Senate Bill 897 and Assembly Bill 2221

Attachment 5 – SB 897/AB 2221 – Transit Parcels

Attachment 6 – August 28, 2023, Planning Commission Staff Report without Attachments

Attachment 7 – August 28, 2023, Planning Commission Resolution and Minutes Correspondences