



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** October 23, 2023

**ITEM TITLE:** Consideration of Introducing an Ordinance Amending the San Carlos Municipal Code Section 18.23.210 - Accessory Dwelling Units/Junior Accessory Dwelling Units and Sections 18.03 - Rules of Measurement, 18.12 - Hillside Overlay District, 18.29 - Design Review, and 18.40 - Use Classifications.

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### RECOMMENDATION:

The Planning and Transportation Commission (PTC) recommends that the City Council introduce an Ordinance to amend the San Carlos Municipal Code Section 18.23.210 - Accessory Dwelling Units/Junior Accessory Dwelling Units and Sections 18.03 - Rules of Measurement, 18.12 - Hillside Overlay District, 18.29 - Design Review, and 18.40 - Use Classifications.

### FISCAL IMPLICATIONS:

There is no fiscal impact and no additional appropriation is needed for this action.

### BACKGROUND:

In 2020 and again in 2022, the City Council adopted updates to the Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) Ordinance to align with new state laws, and to improve processes for reviewing and approving applications.

2020 Update: The City Council fully replaced the ADU and JADU Ordinance (Section 18.23.210 of the San Carlos Zoning Title 18) with a new Ordinance, and adopted minor amendments to other relevant chapters, in response to comprehensive state law updates for ADU and JADU construction.

2022 Update: The City Council adopted several minor updates to the ADU and JADU Ordinance that were recommended based on the experiences of both staff and applicants to improve the permitting process for ADUs and JADUs.

In the fall of 2022, new state laws for ADUs and JADUs were passed and became effective January 1, 2023. Cities that do not update their Ordinance must follow state laws until an updated Ordinance is adopted. Thus, to start the process of updating the City's ADU Ordinance, there was a PTC study session on May 15, 2023. The purpose of the study session was to review the proposed ADU Ordinance amendments and to identify any topics that needed further discussion or refinement.

On September 5, 2023, the PTC reviewed the proposed changes at a public hearing and recommended that the City Council adopt the proposed Municipal Code changes. Feedback from

the PTC study session and public hearing have been considered and reflected within the proposed amendments.

In addition to the recommended items outlined below, the PTC clarified the definition of “high quality transit” to ensure it is consistent with the state definition, and added a cubic feet metric to the “standard refrigerator” definition. The PTC also recommended allowance of ADUs both above and below detached garages, to consider sloped lots, such as those lots located in the hillside areas, and supported the amendment to allow ADUs up to the maximum floor area, but no greater than 50% of the existing primary dwelling, unless classified as a statewide exemption ADU.

## ANALYSIS:

### **Overview of Proposed Amendments.**

The 2030 General Plan Housing Element includes Goal HOU-3, which states “Assist in the Development of New Housing that is Affordable at All Income Levels,” and Action HOU-3.3, which states “Facilitate the Legalization and Construction of Accessory Dwelling Units (ADUs)” and JADUs. The Housing Element sets a timeframe to accomplish Action HOU-3.3. The timeframe calls for the ADU Ordinance to be updated by June 2023 and to be consistent with state laws modifying ADU requirements.

The PTC is proposing amendments to align the City’s ADU Ordinance with new state laws, to encourage ADUs and JADUs, and to “clean up” the Ordinance as described below.

The proposed amendments related to state law include the following:

- Expand the locations where ADUs and JADUs can be constructed (i.e., ADUs permitted in proposed multifamily buildings);
- Clarify design requirements;
- Limit ADU size relative to the main dwelling;
- Require interior entries for JADUs which share a bathroom with the main dwelling;
- Waive ADU parking space requirements for ADUs proposed with a new multi-unit structure;
- For statewide exemption ADUs, waive front setbacks, increase height limits, and decrease second-story side setbacks; and
- Eliminate fire sprinkler requirements, since adding an ADU does not trigger fire sprinkler requirement in a primary dwelling.

Moreover, additional amendments are recommended which include the following:

- Clerical edits;
- Expand the allowable configurations for ADUs/JADUs and detached garages;
- Clarify refrigerator standards;
- Add a definitions section that includes the definitions of JADUs, ADUs, and statewide exemption ADU, and public transit;
- Standardize ADU height limits; and
- Eliminate the discretionary requirement related to obstructing or raising the sill height of ADU windows on second stories.

These amendments aim to streamline the permitting process, ensure compliance with state laws, provide greater clarity for property owners and developers, and reduce the barriers related to the development of ADUs and JADUs.

### **Impact of Proposed Amendments.**

The goal of the amendments is to make the ADU Ordinance complicit with new state laws. While some of these changes may impact overall ADU policies, they are necessary to ensure that the ADU Ordinance is up-to-date and functional. These amendments also implement the programs and policies of the San Carlos 2030 General Plan, including Goal HOU-3 of the recently adopted Housing Element.

Please see Exhibit A to the Ordinance for the full copy of the proposed Ordinance amendments to Section 18.23.210 governing the construction of ADUs and JADUs. Amendments to other relevant sections of the Municipal Code (Exhibit B to Ordinance) are also proposed for consistency in terminology and implementation.

Summaries of Proposed Amendment Sets.

#### **Set 1: Proposed Policy-Related Amendments**

The amendments summarized in Table 1 are recommended to align the ADU Ordinance with the new state Laws and respond to the input received from the PTC. The changes and clarifications aim to decrease barriers to the construction of more ADUs and JADUs. The amendments will also make the Ordinance more consistent, but may impact overall ADU or JADU policies, or their form or function. These amendments have been recommended by the PTC for Council consideration.

Table 1. Proposed Policy-Related Amendments to ADU Ordinance

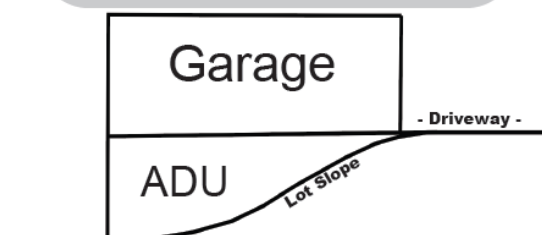
## Proposed Policy-Related Amendments

### Topic 1: Detached Garages and ADUs

#### Recommendation 1A: Allow ADUs to be located both *above* and *below* detached garages.

- Current Ordinance: ADUs may only be located *above* detached garages.
- Rationale: The current Ordinance does not consider configurations of detached garages and ADUs on significantly sloped lots, such as those located within the San Carlos hillside. Allowing ADUs to be located below garages would provide greater flexibility in constructing ADUs on sloped lots.

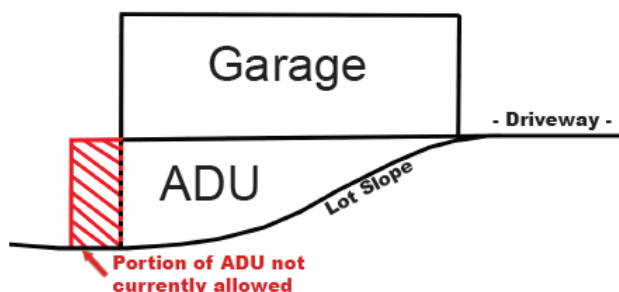
#### ADU BELOW DETACHED GARAGE



#### Recommendation 1B: Allow ADUs above or below a detached garage to be located outside of the garage footprint.

- Background: A standard detached garage is approximately 400 square feet.
- State law: Local agencies must allow at least an 800 square foot ADU.
- Current Ordinance: Requires that where ADUs are included over a detached garage, the ADU footprint must remain entirely within the garage footprint.
- Rationale: The current Ordinance may prevent unique footprints that better maximize the space on the lot or may encourage excessive lot coverage or excessively large garages to accommodate a fully detached ADU.

#### ADU OUTSIDE DETACHED GARAGE FOOTPRINT



## Proposed Policy-Related Amendments

**Recommendation 1C: When built with a detached garage, allow ADU balconies and decks to face rear and side property lines to accommodate minimum ingress and egress.**

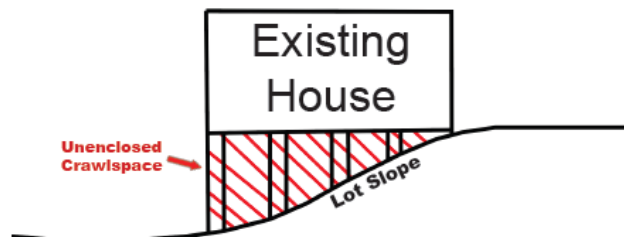
- Current Ordinance: Balconies and decks for this type of ADU configuration (ADU with detached garage) can only face away from the property lines. From staff's understanding, this requirement intends to promote privacy for neighbors.
- Background: The current Ordinance already allows decks and balconies to face necessary directions for other types of ADUs (detached freestanding or attached to main dwelling) to allow minimum safety requirements for ingress and egress.
- Rationale: This amendment would allow greater flexibility in constructing ADUs and JADUs on narrow lots.

## Topic 2: Allowable JADU Locations

**Recommendation 2A: Explicitly allow unenclosed crawlspaces to be converted to JADUs.**

- New state law: Requires that JADUs be allowed in any enclosed space of an existing or proposed single-unit dwelling, including attached garages.
- Current Ordinance: The new state law and current Ordinance do not consider typical house configurations on significantly sloped lots, which often include unenclosed portions of structures that could be converted to usable floor area, and are otherwise not usable, such as crawl spaces or cantilevered covered parking areas.
- Rationale: Allowing unenclosed crawlspaces to be converted to JADUs would provide greater flexibility in creating JADUs from underutilized spaces on lots.

### PROPOSING JADUs WITHIN UNENCLOSED CRAWLSPACES



## Proposed Policy-Related Amendments

### Recommendation 2B: Remove the requirement that new additions shall not contain JADUs.

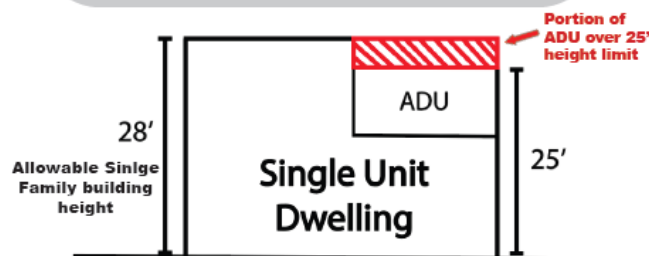
- New state law: Requires that JADUs be allowed in any enclosed space of an existing or proposed single-unit dwelling, including attached garages.
- Current Ordinance: New state law and the current Ordinance do not address unenclosed portions of structures that could be converted to usable floor area, and are otherwise not usable, such as crawl spaces or cantilevered covered parking areas.
- Further, the current requirement that new additions shall not contain JADUs creates an additional burden on applicants because if they would like to create a JADU through proposed floor area, they either need to demolish and rebuild the entire structure, or submit an application for an addition, receive approval of the application, complete construction, and then seek another building permit to “convert” the added-on floor area to JADU.
- Rationale: Removing this requirement would make it easier to create JADUs.

## Topic 3: ADUs Above First Stories

### Recommendation 3A: Allow the height of attached ADUs to be determined by the base zoning district.

- Allowing attached ADUs to be constructed at the same allowable height as the rest of a building will better serve the architectural integrity of building and roof designs, and create more flexibility in constructing ADUs and JADUs as additions to existing multistory structures.
- New state law requires a minimum allowable height of 25' for attached ADUs.
- Without making an adjustment to account for base zoning regulations, every type of development where an ADU may be proposed will have to limit the location of the ADU below 25', which is lower than what is allowed in all residential zoning districts, and within the Hillside Overlay District. This effectively regulates an ADU more strictly than a regular upper story addition of floor area to the primary building.

#### PROPOSED ADU ATTACHED TO TWO-STORY HOME



## Proposed Policy-Related Amendments

### **Recommendation 3B: Strike the requirement for ADU second story windows to “be obscured or have at least 5 foot sills depending on existing and proposed conditions”?**

- This standard treats ADUs and their occupants differently than other types of dwelling units and their occupants by regulating views and does so in a subjective manner.
- New state law has crystallized the requirement that ADUs and JADUs must be regulated by objective standards.
- Second story ADU window requirements are currently established by discretion of the director, so this requirement must be struck because it is not considered objective.
- “Depending on existing and proposed conditions” is also not objective and must be struck/revised to be objective.

## Topic 4: Additional Amendments

### **Recommendation 4: Define size for refrigerators in ADUs to be minimum 20” width, 50” height, 20” depth or 11 cubic feet.**

- Current Ordinance: The Ordinance requires a "standard refrigerator," but does not formally define the dimensions. This has proven to be confusing for applicants.
- Rationale: Setting a minimum refrigerator size would provide clarity to applicants.

### **Recommendation 5: Allow ADUs up to the maximum floor area but no greater than 50% of the existing primary dwelling, unless classified as a Statewide Exemption ADU**

- Current Ordinance: The Ordinance allowed ADUs to be a maximum of 850 square feet for a studio or one bedroom and 1,000 square feet for a unit that contains more than one bedroom.
- Rationale: Maximum floor area limits apply to the entire lot, regardless of the type of structure. Removing the maximum square footage requirements and allowing ADUs to utilize any remaining floor area available for the lot will allow flexibility for planning and design for both the main residence and the ADU. To ensure that ADUs remain "accessory," it is proposed that the size is limited to no more than 50% the size of the primary dwelling unit.

### Set 2: Proposed Amendments to “Clean Up” Ordinance

The proposed amendments, as shown in Table 2, seek to clarify requirements and make the Ordinance internally consistent. The amendments are clerical and not policy related.

*Table 2. Proposed Amendments to “Clean Up” the ADU Ordinance*

Location of “Clean-Up” Amendments
<b>18.23.210: Accessory and junior accessory dwelling units:</b>
Numbers and Location Subsection
JADU Development Requirements Subsection
ADU Development Requirements Subsection
<b>Other Clarity-Related Amendments:</b>
Chapter 18.03 Rules of Measurement
Chapter 18.12 Hillside Overlay District
Chapter 18.29 Design Review
Chapter 18.40 Use Classifications

### Set 3: Proposed Amendments to Address State Laws

The proposed amendments in Table 3 are required by California State Senate Bill 897 and Assembly Bill 2221, which were codified into law within California Government Code Sections 65852.2, 65852.22, and 17980.12 (see Attachment 2 for summaries of SB 897 and AB 2221). Additional amendments are recommended by the PTC to reflect requirements in existing state law (Table 4).

*Table 3. Proposed Amendments Based on New State Laws*

New State Law: Must amend City Ordinance to achieve minimum compliance
<b>Attached Garage Conversion to JADU:</b>
<ul style="list-style-type: none"><li>• New state law: Clarifies that enclosed areas within an existing dwelling can be converted to JADU, including attached garages.</li><li>• Current City Ordinance and Planning Divisions’ practice already allows attached garages to be converted to JADUs.</li><li>• PTC Recommendation: Amend the Ordinance to explicitly state that City will allow attached garages to be converted to JADU to clearly comply with state law.</li></ul>
<b>ADUs in Multifamily Structures:</b>
<ul style="list-style-type: none"><li>• New state law: Requires local agencies to allow ADUs in both existing and proposed multifamily structures.</li><li>• Current Ordinance: Only allows ADUs to be converted from within existing multifamily structures.</li></ul>



## New State Law: Must amend City Ordinance to achieve minimum compliance

- PTC Recommendation: Amend the Ordinance so that ADUs are allowed within existing or proposed multifamily structures.

### Fire Sprinklers:

- Previous state law: Fire sprinklers cannot be required for ADUs/JADUs if sprinklers were not required for the main unit.
- New state law: Further clarifies that fire sprinklers shall not be required for the main unit due to construction of an ADU/JADU.
- PTC Recommendation: Amend the Ordinance to reflect this requirement and strike out the fire sprinkler requirement under the Building Code requirements.

### Front Setbacks:

- Current Ordinance: Allows the front setback regulation to be waived for a statewide exemption ADU only where it is demonstrated by an applicant that the front setback unduly constrains the creation of the ADU.
- New state law: Front setbacks are now included in the development requirements that must be waived for statewide ADUs. Local agencies cannot establish limits on lot coverage, floor area, open space, minimum lot size, and front setbacks that do not permit construction of at least an 800 square foot ADU.
- PTC Recommendation: Amend statewide exemption for ADU Development Standards to comply with state law.

### Height:

- Current Ordinance: Allows 16' maximum for a statewide exemption ADU (or any ADU).
- The height limit has increased for certain statewide exemption ADUs:
- Detached ADU with an existing or proposed single family dwelling unit or single-story multifamily dwelling unit height maximum increased to 18'-20' when located within one-half (1/2) mile of public transit.
- Detached ADU with an existing or proposed multifamily, multi-story dwelling unit height maximum increased to 18' (regardless of proximity to public transit).
- Detached Garage + ADU is allowed a maximum 20' height – no change proposed.
- Attached ADU height minimum increased to 25'.
- PTC Recommendation: Amend the Ordinance to reflect these height maximums, and recommends amendments offering additional height flexibility to attached ADUs.

### JADU Shared Bathrooms:

- JADUs may include separate sanitation facilities from the main dwelling or may share with the main dwelling.
- Where JADUs share sanitation facilities with the main dwelling, new state law requires that an interior entry from JADU to main dwelling be provided.
- The current Ordinance does not outline a requirement for an interior entry for shared sanitation facilities.

### New State Law: Must amend City Ordinance to achieve minimum compliance

- PTC Recommendation: Amend the Ordinance to explicitly require an interior entry from JADU to main unit where sanitation facilities are shared.

#### **Parking Standards:**

- Local agencies cannot impose parking standards on an ADU included in an application to create a new single-unit dwelling or a new multifamily dwelling on the same lot.
- PTC Recommendation: Amend the Ordinance Parking Standards to include this exception.

#### *Objective Design Standards*

State law requires that local agencies may only review ADUs/JADUs using objective standards and must ministerially approve applications for building permits for statewide exemption ADUs. The new state bills add the definition of “objective standards” to the statute: “Objective standards mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.”

The PTC is recommending amendments to the Ordinance to eliminate all discretionary and subjective requirements. However, new design standards are not outlined for ADUs at this time because the City is separately working to prepare objective design standards which will comprehensively address design requirements for all residential project types, including ADUs.

*Table 4. Proposed Amendments Based on Existing State Laws*

## Existing State Law: Suggested amendments to better comply with state law

### Allowable ADU and JADU Locations:

- ADUs and JADUs may be constructed on lots with existing or proposed residential uses in any zoning district as well as residential zoning districts.
- PTC Recommendation: Amend the Ordinance to reflect allowable ADU and JADU locations.

### Second Story Setbacks:

- Interior side and rear setbacks must be reduced to minimum 4 feet to allow a statewide exemption ADU, or a JADU, as long as the unit complies with maximum height requirements and other relevant dimensional requirements.
- PTC Recommendation: Amend the Ordinance to reflect that statewide exemption ADUs in any configuration are allowed to reduce interior side and rear setbacks to a minimum of 4 feet.

### Percentage of Main Dwelling:

- When building a new attached ADU or converting existing space within a primary dwelling to ADU, state law requires that the ADU may constitute no greater than 50% of the resulting floor area of the main dwelling.
- No standard currently exists in the Ordinance outlining the maximum percentage of the resulting dwelling an ADU may constitute.
- While this scenario is uncommon, in at least two conversion ADU scenarios, staff had to reference state law where the local Ordinance was silent.
- PTC Recommendation: Amend the Ordinance to include this limit on ADU sizes relative to the main building. Specifically, if there is an existing primary dwelling, the total floor area of an attached or detached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling, unless classified as a statewide Exemption ADU.

## Consistency with General Plan.

The City of San Carlos Zoning Ordinance is required to be consistent with the City's General Plan (§65860). This is one of two findings that must be made when considering amendments.

1. The ordinance amendment is consistent with the General Plan.

*Basis for finding:* The 2030 General Plan Housing Element includes Goal HOU-3, which states "Assist in the Development of New Housing that is Affordable at All Income Levels," and Action HOU-3.3, which states "Facilitate the Legalization and Construction of Accessory Dwelling Units (ADUs)" and JADUs. The Housing Element sets a timeframe to accomplish Action HOU-3.3; the timeframe calls for the ADU Ordinance to be updated by June 2023 to be consistent with state laws modifying ADU requirements. One of the primary goals of these proposed amendments is to ensure that San Carlos's development standards pertaining to ADUs and JADUs are consistent with state law, which is intended to expand housing opportunities by reducing barriers, better streamline approval and expand capacity to accommodate the development of ADUs and JADUs.

2. The Ordinance amendment is consistent with the purpose of this zoning title to promote the growth of the city in an orderly manner and to promote and protect the public health, safety, peace, comfort and general welfare.

*Basis for finding:* The proposed amendments are consistent with the goals, policies, and actions of the 2030 General Plan and as such promote the location, design, and placement of accessory dwelling units and junior accessory dwelling units in an orderly manner while continuing to protect the public health, safety, peace, comfort, and general welfare.

### **Environmental Determination.**

This project implements the programs and policies of the San Carlos 2030 General Plan, is within the scope of the activities and impacts identified in San Carlos 2030 General Plan Program Environmental Impact Report (EIR) and no new environmental effects have been found and no new mitigation is necessary. Therefore, no additional environmental review is required pursuant to Public Resources Code Section 21166 and California Environmental Quality Act (CEQA) Guidelines Section 15162 and 15168.

### **Next Steps.**

Should the City Council adopt the Planning Commission's recommendations as proposed or with amendments, a second reading of the Ordinance would be held on November 13, 2023. Once the Council adopts the Ordinance at the second reading, the proposed amendments would become effective December 12, 2023. In addition, the City is required to submit the adopted Ordinance to the State Department of Housing and Community Development within 60 days after adoption. If HCD finds that any portion of the Ordinance is not consistent with state Law, then the Ordinance can be sent back to the City for changes.

### **ALTERNATIVES:**

The alternatives available to the City Council include:

1. Introduce an Ordinance Amending the San Carlos Municipal Code Section 18.23.210 Accessory Dwelling Units/Junior Accessory Dwelling Units and Sections 18.03 (Rules of Measurement), 18.12 (Hillside Overlay District), 18.29 (Design Review), and 18.40 (Use Classifications); or
2. Do not Introduce the proposed Ordinance;
3. Provide staff with alternative direction.

Respectfully submitted by:

Al Savay, Community Development Director

Approved for submission by:



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Jeff Maltbie, City Manager

ATTACHMENT(S):

1. Proposed Ordinance  
Exhibit A - Proposed Ordinance Amendment Section 18.23.210  
Exhibit B - Proposed Amendments to Other Relevant Code Sections
2. Summary of State Laws Pertaining to ADUs and JADUs
3. Planning and Transportation Commission Resolution 2023-17
4. Notice - Proof of Publication