

**TO:** Andrew P. Powers, City Manager

**FROM:** Kelvin Parker, Community Development Director

**DATE:** October 8, 2024

**SUBJECT:** Housing Element Implementation – Accessory Dwelling Unit Regulations (MCA 2023-70005)

**RECOMMENDATION:**

1. Find that the update of Accessory Dwelling Unit (ADU) regulations is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15282(h) "Other Statutory Exemptions," and Public Resources Code Section 21080.17 which specifically finds that CEQA does not apply to the adoption of an ordinance by a city to implement the provisions of Section 66310 et seq. of the California Government Code.
2. Read in title only, further reading be waived, and if no objection, introduce ordinance approving Municipal Code Amendment MCA 2023-70005 amending Chapter 4 of Title 9 of the Thousand Oaks Municipal Code.

**LEVINE ACT ITEM: No**

**FINANCIAL IMPACT:**

**No Additional Funding Requested.** Staff time to prepare and process the MCA and the cost of providing public hearing notices is included in the Adopted FY 2024-25 General Fund Budget.

**BACKGROUND:**

On September 28, 2022, Governor Newsom signed housing laws amending state ADU law which were effective as of January 1, 2023. Government Code Section 66321 redefined height restrictions and allowed applicants to apply simultaneously for multi-family projects with ADUs and Junior Accessory Dwelling Units (JADUs). Government Code Section 66322 permits homeowners to develop ADUs even if unpermitted work exists on the property. If a proposed JADU does not include a bathroom, an internal connection must be provided to the primary dwelling per Government Code Section 66333.

### Housing Element

The 2021-2029 Housing Element was adopted by City Council on December 5, 2023, and certified by the California Department of Housing and Community Development (HCD) on May 29, 2024. The 2021-2029 Housing Element includes six implementation items under Program #3 to promote ADU construction. This amendment addresses item #5 while staff is working on the remaining items, such as developing ADU incentives in exchange for affordability covenants, updating permit applications, providing resources online, exploring funding opportunities, and obtaining pre-approved site and floor plans for applicants.

### Planning Commission

The Municipal Code Amendment (MCA) for the ADU Ordinance update was presented to the Planning Commission on September 9, 2024, for review and recommendation. The staff report for the Planning Commission, as well as the Planning Commission Resolution, and the Supplemental Packet (Attachment #1) provide a detailed discussion of the updates and changes to the City's ADU ordinance.

At the hearing, questions were raised regarding state law and the provisions allowing size limitations on ADUs with two or more bedrooms, maximum allowable density, privacy glass, and confirmation that the City is not allowing the sale of ADUs.

Regarding size limitations of ADUs with two or more bedrooms, a concern was raised over an interpretation of Government Code Section 66321. A suggestion was made to revise the draft ordinance to allow for a maximum of 1,000-square feet (sf) attached ADUs with two bedrooms or more, versus the 850 sf. allowance of an ADU with one bedroom or more, as proposed by staff. Staff researched ordinances from other jurisdictions and consulted with the City Attorney's Office to determine whether ADUs with more than one bedroom could be limited to 850 sf. After a review of the law and its inconsistencies, the ordinance was originally drafted by staff to limit the size of attached ADUs to 850 sf. The Planning Commission recommended revision to allow for a 1,000-sf. attached ADU which was incorporated into the Planning Commission motion and inserted in the attached draft ordinance for City Council's consideration.

Another issue raised at the Planning Commission meeting concerned whether projects governed by Covenants, Conditions, and Restrictions (CC&Rs) are prohibited from building an ADU. This question does not relate to the City's regulation of ADUs and is an issue to be resolved between a Homeowners

Association and its members. However, California Civil Code Section 4751 provides that covenants, conditions, or restrictions in certain documents that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a lot zoned for single-family residential use are void and unenforceable.

After receiving the staff presentation, public comment, and holding deliberations on the matter, the Planning Commission voted to recommend approval, including staff-recommended changes discussed during the meeting and outlined in the supplemental packet. The motion passed with a 3-0 vote, with two commissioners absent.

### **DISCUSSION/ANALYSIS:**

#### **Summary of Proposed Changes**

Due to the significant changes proposed to the existing Thousand Oaks Municipal Code section on ADUs (Section 9-4.2521), the draft ordinance (Attachment #2) is presented without tracked changes and recommended to replace the existing Municipal Code section in its entirety. The new ADU ordinance is proposed to be relocated from its current section and established as a standalone article (Article 45 Sections 9-4.4501 through 9-4.4513). For reference, Attachment #3 includes a redlined version of all other related code sections.

#### **Application Processes**

The most significant change in the State Law updates is a clear distinction between an ADU/JADU application that follows a streamlined process and one that is reviewed according to the jurisdiction's ordinance. The State-streamlined process has specific limitations on height and square footage but offers a more streamlined approach requiring only a building permit. This path also prohibits the City from imposing development or objective design standards. In comparison, if an applicant chooses the City's application process, they are allowed additional square footage and the option to include second-floor ADUs and JADUs within the primary dwelling. However, the project must adhere to the development and objective design standards outlined in the updated ordinance (Attachment #2).

#### **Key Topic**

State law continues to allow agencies to impose development standards such as lot coverage, building separation, open space requirements, and setbacks. New State law also continues to allow agencies to impose a front yard setback unless it would preclude an ADU that is at least 800 sf. in size, with four-foot side and rear yard setbacks. To maintain consistency with State law, the ordinance would allow encroachment into the required front yard setback only to the extent necessary to

permit an ADU up to 800 sf. in size. However, now that owners have more options to construct ADUs on their property, staff has not yet encountered a situation where all minimum required setbacks could not be met.

### Community Outreach

Notification for this hearing, and the Planning Commission hearing, was completed in compliance with the Thousand Oaks Municipal Code and the Government Code.

### Environmental Review

Pursuant to Section 21080.17 of the Public Resources Code, the adoption of an ordinance regarding second units in a single-family or multifamily residential zone to implement the provisions of California Government Code Section 66310 et seq. (formerly section 65852.2) is exempt from the requirements of CEQA (see also California Code of Regulations Section 15282(h) "Other Statutory Exemptions"). Recommendation and eventual adoption of the proposed ordinance implement State regulations regarding second units (ADUs and JADUs) in residential zones, and is, therefore, exempt from CEQA.

### **COUNCIL GOAL COMPLIANCE:**

Meets the following City Council goals:

B. Provide municipal government leadership which is open and responsive to residents, and is characterized by ethical behavior, stability, promoting public trust, transparency, confidence in the future, and cooperative interaction among civic leaders, residents, business representatives, and staff, while recognizing and respecting legitimate differences of opinion on critical issues facing the City.

D. Maintain strong commitment to public safety (including Police, Fire, Emergency Medical Services, and Emergency Management) to ensure City remains one of the safest Cities in the United States with a population over 100,000.

E. Complete ring of open space around the City; Protect and preserve ridgelines, natural habitat, and designated open space areas.

**PREPARED BY:** Angela Georgeff, Associate Planner

### **Attachments:**

Attachment #1 – Planning Commission Staff Report, Resolution, and Supplemental

Attachment #2 – Municipal Code Amendment Ordinance

Attachment #3 – Municipal Code Amendment with track changes