



# Council Agenda Report

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**FROM:** Kimberly Cole, AICP, Community Development Director

**SUBJECT:** Adopt an Interim Urgency Ordinance to Comply with State Law and to Create a Maximum Height Limit of Sixteen Feet for Accessory Dwelling Units to Comply with State Law by Adding Municipal Code Chapter 38, Article 17, Section 38-112.6 Accessory Dwelling Units (Not a Project Under CEQA per Article 20, Section 15378, California Public Resources Code 21080.17 and Under General Rule Article 5, Section 15061)

**RECOMMENDATION:**

That the City Council adopt an interim urgency ordinance to comply with state law and to create a maximum height limit of sixteen feet (16') for Accessory Dwelling Units ("ADUs").

**POLICY IMPLICATIONS:**

In response to California's housing crisis, the State Legislature passed a number of new laws that further limit local regulation of ADUs. An ADU is "...an attached or detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated." (Government Code section 65852.2(j).) An ADU includes an efficiency unit (a unit that typically combines the bedroom, living room and kitchen all into one single room) and a manufactured home.

A JADU "...means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure." (Government Code section 6585.22(h)(1).)

State law requires cities to adopt ADU zoning regulations consistent with state law. In the absence of a valid local ordinance, the new state law provides a set of default standards governing the City's regulation and approval of ADUs. The City's existing ordinance is almost entirely inconsistent with state law. This inconsistency causes confusion with applicants. Repeal of the City's existing ordinance and incorporation of the state standards will provide clarity to applicants and aid in the processing of permits. Setting the height standard at not to exceed 16 feet preserves, to the maximum extent allowed by law, the local values set forth in established regulations.

Pursuant to Government Code section 65858(a), this urgency ordinance would initially be effective for 45 days, and may be extended after notice and public hearing for 10 months and 15 days, and subsequently for one year. The initial adoption, and any subsequent extensions, requires a four-fifths vote. Adoption also requires findings that there is an immediate threat to the public health, safety, or welfare due to the absence of city regulations regarding the height of ADUs.

**FISCAL IMPLICATIONS:**

There is no fiscal implication for the City.

**ENVIRONMENTAL DETERMINATION:**

The City of Monterey Planning Office determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA) (CCR, Title 14, Chapter 3 (CEQA Guidelines), Article 20, Section 15378 and California Public Resources Code 21080.17). In addition, CEQA Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the proposed action and this matter have no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines Section 15378, this matter is not a project. Because the matter does not cause a direct or any reasonably foreseeable indirect physical change on or in the environment, this matter is not a project.

**ALTERNATIVES CONSIDERED:**

The City Council may decide to not adopt the urgency ordinance.

**DISCUSSION:**

The California State Legislature brought forward several bills in 2019 relating to the planning and permitting of ADUs. In October 2019, the Governor signed into law Assembly Bill (AB) 68, AB 881, and Senate Bill (SB) 13. Additionally, AB 68 amended standards for Junior ADUs (JADUs) and SB 13 made additions to the State Health and Safety Code (added new Section 17980.12). The new laws took effect on January 1, 2020.

State law set forth in Government Code section 65852.2(a)(1)(B)(i) allows jurisdictions to impose a height limitation of no less than 16' on accessory dwelling units. However, the City has not imposed this height limitation so it is possible that State law can be interpreted that the maximum height is the height restriction of the underlying zoning. In most cases, this would allow an accessory dwelling unit to be 25' tall in a residential district.

At a recent Council meeting, the Council directed the Planning Commission to hold policy discussions to consider if the City should allow ADUs over 16' in height, and, if so, recommend regulations to guide this process. Staff expects this discussion to occur over the winter months.

Staff recommends the attached urgency ordinance be adopted to clarify that the City is permitting ADUs consistent with state regulations and to prevent ADUs over 16' in height until the Planning Commission has an opportunity to provide policy recommendations.

Attachment: 1. Ordinance

e: All Neighborhood and Business Associations  
Housing Outreach list

Writings distributed for discussion or consideration on this agenda item, pursuant to Government Code § 54957.5, are posted at <https://monterey.org/Submitted-Comments> within 72 hours of the meeting.