Planning Commission
Meeting
03-07-22
Item
4.A.

Commission Agenda Report

To: Chair Hill and Members of the Planning Commission

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Approved by: Adrian Fernandez, Assistant Planning Director

Date prepared: February 24, 2022 Meeting date: March 7, 2022

Subject: Local Coastal Program Amendment No. 18-002 and Zoning Text Amendment No. 18-004 - An amendment to the Local Coastal Program and Title 17 (Zoning) of the Malibu Municipal Code to Update Regulations Related to Accessory Dwelling Units (Continued from January 18, 2022)

Applicant: City of Malibu
Location: Citywide

RECOMMENDED ACTION: Adopt Planning Commission Resolution No. 22-08 (Attachment 1) determining the amendments are exempt from the California Environmental Quality Act, and recommending that the City Council approve Local Coastal Program Amendment (LCPA) No. 18-002 and Zoning Text Amendment (ZTA) No. 18-004 for an amendment to the Local Coastal Program (LCP) and to the Malibu Municipal Code (MMC) Title 17 (Zoning) to update regulations related to Accessory Dwelling Units (ADU).

DISCUSSION: In 2016, the State legislature passed new rules to encourage development of ADUs as a measure to increase the supply of affordable housing in California. These laws went into effect in 2017.[1] In 2019, additional State laws[2] related to ADUs were signed into law. This legislation took effect on January 1, 2020. A summary of State bills related to ADUs can be found on the Planning Department web page at https://malibucity.org/adu. In addition, previous staff reports and meeting materials can be bound on this webpage.

Malibu's zoning laws already allowed for these types of units, known in the LCP and MMC as "second units" and "guest houses"; however, the City's codes need to be updated to comply with the new laws. Like other coastal cities with a certified LCP, Malibu faces the

[1] Senate Bill (SB) 1069, Assembly Bill (AB) 2299 and AB 2406
[2] AB 68 and 881, and SB 13

challenge of balancing the requirements of ADU law with requirements of the California Coastal Act. In general, State legislation pertaining to ADUs supersedes a city's existing land use and other regulations. However, the State legislation does not supersede the requirements of the California Coastal Act and by extension, the City's LCP.

When the legislature amended the law relative to ADUs, it explicitly included in the statute language stating:

> "Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units." (Gov. Code 65852.2 subd. (l))

Since Malibu has a certified LCP, the LCP still applies. The LCP amendment will require certification by the California Coastal Commission (CCC) before going into effect. The proposed amendment would bring the LCP and MMC into conformance with new State regulations regarding unit size, parking requirements, development standards, and other key standards, in addition to reconciling terminology between State and local laws.

Background

Staff began work on these updates in 2018. The Planning Commission held a public hearing on draft amendments on September 4, 2018 and directed staff to bring back additional information related to the ordinance. In November 2018, the Woolsey Fire occurred and staff efforts to facilitate the community's recovery and rebuilding efforts forced a delay of work on ADU amendments. The State adopted additional requirements for ADUs in 2019 that were to go in effect on January 1, 2020, that have led to additional changes to the draft ADU ordinance.

On May 20, 2021, staff brought back revised draft amendments to the Planning Commission that incorporated the 2019 State amendments and addressed Commissioner comments from the September 2018 public hearing. The May 20, 2021 public hearing was continued without the Planning Commission reaching a recommendation to City Council and staff was asked to address additional Commissioner comments before bringing the item back to the Commission.

2018 Planning Commission Recommendations

The ordinance before the September 4, 2018, Planning Commission meeting incorporated all current State ADU laws and addressed the following Planning Commission recommendations.

The Planning Commission requested that staff:

1) Insert a citation of the appropriate federal and/or State law pertaining to mobile homes/tiny houses.
2) Clarify that the definition of car share does not include ride sharing networks such as Uber and Lyft.
3) Add a provision stating that short-term rental of ADUs is not allowed, together with justification based on the purpose of ADU law and the potential effect on the City's regional housing needs assessment (RHNA).
4) Clarify that the size of an ADU is limited to 900 square feet or no more than 50 percent of the living area of the primary residence.
5) Provide additional analysis and options for a local appeals process and confirmation of Fire Department requirements for ADUs.

2021 Planning Commission Hearing

The Planning Commission held a second public hearing on May 20, 2021, and requested that staff conduct additional research for Commission consideration. Each of these recommendations are discussed below in the *Proposed Amendments* section of the report.

2022 Planning Commission Hearing

Due to time constraints, the Planning Commission meeting scheduled for January 18, 2022 was continued (rescheduled) to March 7, 2022.

Senate Bill (SB) 9

Senate Bill No. 9 (SB 9), signed into law by Governor Newsom on September 16, 2021, requires all local agencies to approve a proposed housing development containing no more than two residential units on a lot within a single-family residential zone, without a discretionary permit, if the development meets certain criteria. The bill also allows the subdivision of one lot into two lots within a single-family residential zone ("urban lot split") without a discretionary permit, if it meets certain criteria. SB 9 legislation went into effect January 1, 2022.

Similar to State ADU law, SB 9 projects that are located within the Coastal Zone are subject to the regulations in the Coastal Act and a Coastal Development Permit is required, but the city may choose to not hold a public hearing on a CDP.. SB 9 housing development projects must meet all development standards in the LCP.

To help the Planning Commission better understand how SB 9 housing developments would work with the City's ADU ordinance, staff is providing the following information.

Multiple units may be constructed on an SB 9-eligible lot as follows:

- Without an urban lot split, an applicant may construct two primary dwellings in addition to an Accessory Dwelling Unit (ADU), or a Junior Accessory Dwelling Unit (JADU) as permitted by law.
- With an urban lot split an applicant may construct up to two dwellings of any kind, meaning either two primary dwelling units (with no ADU or JADU) or one primary dwelling unit and either an ADU or a JADU, on each of the newly created lots.

ADU and JADU laws (Gov. Code §§ 65852.2 and 65852.22) will continue to apply to eligible properties provided they do not utilize both the two-unit development and lot split provisions of SB 9.

Proposed Amendments

The proposed language found in Exhibits A (LCP) and B (MMC) to Planning Commission Resolution No. 22-08 (Attachment 1) will update the City's regulations for second units consistent with all ADU laws. The suggestions made by the Planning Commission are also included where those changes did not conflict with new State law. Exhibits A and B of the resolution are presented in underline/strikethrough format to highlight <u>added</u> and ~~deleted~~ language compared to existing codes.

In implementing this ADU ordinance, the City is seeking to balance the issues relevant to development in the Coastal Zone with the policies put forward by State ADU law. With the proposed amendments, the MMC will include all required State standards and provide for ministerial processing of ADUs consistent with State law; however, introductory language is included to make it clear that since ADU law does not supersede the Coastal Act, every new ADU will be subject to an analysis for compliance with the LCP before it is reviewed for compliance with the MMC.

<u>CCC Guidance Memorandum</u>

The CCC recently issued an updated guidance memorandum, dated January 21, 2022 (Attachment 2) in which a determination was made that all ADUs that meet the definition of development require an ADU CDP. ADUs in existing single-family homes that do not meet the definition of development would not be considered development and thus would not be subject to the LCP. For purposes of the LCP, there are no exempt ADUs. The definition of development in Chapter 2 of the LCP is as follows:

> *DEVELOPMENT - means, on land, in or under water, the placement or erection of a solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; change in density or intensity of use of land, including but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits,*

except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water; or access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private or public or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes; kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

LIP Sections 13.10(E) and 13.4.1(A) (refer to Exhibit A of Attachment 1) have been updated consistent with the new direction in the CCC memorandum and confirmed in discussions with Coastal staff. Section 13.10(E) now states as follows:

E. Coastal Development Permit required.

An accessory dwelling unit coastal development permit (ADU CDP) issued in accordance with Section 13.31 shall be required for ADUs. An ADU or JADU created from habitable space and located entirely within an existing single-family residence which does not change the building envelope is not considered development and does not require an ADU CDP. Unfinished basements or attics, rooms with floor to ceiling heights less than 6 feet, garages and accessory structures would not be considered habitable space. ADUs located in multifamily dwellings shall require an ADU CDP.

Both the LCP and MMC have a definition for "habitable floor area" which reads "See living area". The definition of "living area' has been updated consistent with the language in 3.10(E) as follows:

LIVING AREA - the interior habitable area of a dwelling unit, including finished basements ~~and~~ or attics but does not include unfinished basements or attics, rooms with floor to ceiling heights less than 6 feet, ~~with a~~ garages or accessory structures.

If a project is not considered development, then the project would be processed per the MMC. There are two options for ADU processing in the MMC (refer to the new MMC Chapter 17.44 in Exhibit B of Attachment 1). First, if a project is one of four specific, limited types, it would be processed with a building permit only. Second, if the ADU does not meet one of those four types, then the ADU would be processed with an Administrative Plan Review (APR). Some ADUs, even if they are not considered development in the LCP, may

require upgrades to the Onsite Wastewater Treatment System (OWTS), which will require a CDP (LIP Section 13.29). In these cases, the APR will be processed separately from the OWTS only CDP.

In addition, new fees will need to be established for a CDP and APR related to ADUs. Staff anticipates that the CDP for ADU fee would be the same as the fee charged for an OWTS CDP and the APR for ADU fee would be the same as the fee charged for a minor APR. The new fees will be established by the City Council when they consider the proposed amendments.

Attachment 3 (Housekeeping Amendments) summarizes proposed wording changes that provide internal consistency, clarity, and consistency with ADU law and Attachment 4 (Summary of ADU Regulations) summarizes some of the main ADU regulations.

<u>May 20, 2021 Planning Commission Recommendations</u>

The Planning Commission recommendations from the May 20, 2021 hearing are discussed in detail following each comment.

Comment No. 1 - Change the term Administrative Coastal Development Permit (ACDP) to make it clearer that the application does not follow the same process as traditional ACDPs.

This provision is already in the proposed amendment. See LIP Section 13.31 which sets up a process similar to the permit required for an OWTS which requires a OWTS CDP. For ADU's the permit would be called an ADU CDP.

However, staff is recommending a change to the appeal and reporting requirements in Section 13.31.3. In the draft ordinance considered by the Planning Commission in May, only ADUs located in the appeal zone and ADU CDP permits that included a Site Plan Review or Variance, which are discretionary permits, were reported to the Planning Commission. This process was proposed to address State ADU law that provides for ministerial approval of ADUs. However, after further review of the law as it relates to the Coastal Act, staff now believes that allowing a public hearing is an option. State law indicates that local governments shall not be required to hold public hearings for coastal development permits (Gov. Code 65852.2 subd. (l)) but it does not prohibit a public hearing.

Allowing for a public hearing will permit staff to report all ADU CDPs to the Planning Commission. Staff is still recommending that an ADU CDP be reviewed and approved by the Planning Director but Section 13.31.3 was revised to mirror the reporting language in OWTS CDP (LIP Section 13.29.3) and now reads as follows:

13.31.3 Reporting of ADU CDPs

1. The Planning Director shall report in writing to the Planning Commission at each meeting ADU CDP permits approved under this section in the same manner as for an administrative permit, consistent with LIP Section 13.13.6.
2. Appeals. Local appeals shall be processed consistent with LIP Section 13.20.1; notice of all local appeals shall be provided in the same manner as for an administrative permit. If the project is located in the appealable zone, Coastal Commission appeals shall be processed consistent with LIP Section 13.20.2.

Comment No. 2 - Review the required setbacks in MMC Section 17.44.090 and review options for making the setback standards more consistent throughout.

Chapter 17.44.090 provided for three different side- and rear-yard setbacks as follows:

1. Building Permit Only ADUs – 4 feet which is the State standard
2. An ADU in a Very High Fire Hazard Severity Zone (VHFHSZ) without two means of access - the setback is increased from 4 to 5 feet to enhance fire safety
3. ADU above a garage – five feet to reduce impact of a two-story structure

The provision for ADU's located above a garage has been deleted since four feet is the maximum allowed for an ADU per State law. However, State law allows jurisdictions to consider safety in identifying areas where ADUs are either not appropriate or require additional safety regulation so staff is recommending that increased setbacks beyond four feet be required in properties in the VHFHSZ without two means of street access. This requirement will provide greater safety in this area and access for firefighters to areas where residents may be located. This provision is only required for projects processed with an APR and is not included in the LIP since ADUs processed with an ADU CDP must meet the required setbacks in the LIP Section 3.10(G).

Comment No. 3 – Research options for adding minimum width of road in Very High Fire Hazard Safety Zones with one means of access

The entire City of Malibu is in a designated VHFHSZ. The proposed amendments address ADUs on lots that do not have at least two distinct means of vehicular access, which places these lots at increased fire risk. An exhibit that graphically illustrates the two means of access requirement is included as Attachment 5. The language considered by the Commission at its May 2021 meeting did not establish a minimum road width for vehicular access.

There are no Los Angeles County Fire Department requirements for an JADU or ADU proposed on a property with only one means of access; however, State law allows jurisdictions to consider safety in identifying areas where ADUs are either not appropriate or require additional safety regulations.

Additional requirements for these lots include the installation of fire sprinklers, the provision of onsite replacement of parking removed for garage conversions, and 10-foot separation between an ADU and other structures. While ADUs processed with an ADU CDP must meet the existing setback requirements in LIP Section 3.10(G), an ADU processed with the APR in the MMC are limited to a four-foot side and rear yard setback. As noted above, staff is proposing to increase side and rear yard setbacks to five feet in the MMC for properties in the VHFHSZ.

Los Angeles County (Section 22.140.640(D)) prohibits ADUs on lots located in a VHFHSZ that do not have two means of access that have at least 24 feet in unobstructed width built to public street standards. Staff is recommending a 24-foot road width improved with paving or other all-weather surfacing. It is important to note that the proposed amendments do not prohibit ADUs in VHFHSZ with or without two means of access but adds additional requirements to enhance fire safety as noted above in the preceding paragraph.

Comment No. 4 – Recommend changing the Total Development Square Footage (TDSF) reference with language staff will craft to use in place of TDSF.

Staff is recommending using the term “square footage” since square footage or living area is the terminology used in the existing code for not only second units and guest houses but all other structures where square footage is specified and TDSF is defined as the total of all structures on a site not one building or unit. However, in order to ensure consistency with other language utilized in the code on how square footage is measured and what is included when calculating the TDSF for a lot, staff is recommending the following revised language. This language would be utilized for both an ADU and guest house in the LCP and MMC:

> *The maximum square footage of an ADU shall be 900 square feet for a studio or one bedroom and 1,200 square feet for two bedrooms. No more than two bedrooms are allowed. The maximum square footage shall include interior and exterior walls, basements, mezzanines, storage space, and any space with a height clearance (floor to ceiling height dimension) above six feet. The area of a garage (400 square feet maximum) provided as part of an accessory dwelling unit and exterior decks or overhangs that are attached to the structure shall not be included in the 900 or 1,200 square foot limit. The maximum square footage of the ADU, garage, and other attached structures that are otherwise considered total development square footage shall be included in the overall total development square footage for the lot.*

Existing language in the code for both a guest house and a second unit utilizes the term living area. For a second unit the language is as follows:

> *The maximum living area of a second unit shall not exceed nine hundred (900) square feet, including any mezzanine or storage space. A second unit may include a garage not to exceed four hundred (400) sq. ft. The square footage of the garage shall not be included in the maximum living area.*

Staff considered using and revising the term "living area" which is defined in the LIP, MMC, and State law as follows:

> *Living area means the interior habitable area of a dwelling unit, including basements and attics but does not include a garage or accessory structures.*

However, modifying the definition in the LIP and MMC would result in a definition different than State law which could result in confusion so staff is recommending using square footage as stated above to regulate the size of an ADU.

In addition, while living area has been previously measured by the area within interior walls, when determining TDSF, the method of measuring is from exterior walls so language was added to require measurement from exterior walls when determining maximum square footage for consistency purposes.

Comment No. 5 – Suggest removing all references to Junior ADUs from the LCPA except in the definitions and exemptions sections.

This recommendation was adopted and Junior ADU's are now only mentioned in Definitions and Section 13.10(E) – Coastal Development Permit Required.

Comment No. 6 - Further discussion to be conducted on parking issues, including the definitions of public transit and major transit stop.

Generally one off-street parking space is required for an ADU consistent with State law. However, per State law the proposed amendments provide some exceptions to the one parking space per ADU including if the ADU is located within one half mile walking distance of public transit [LIP 3.10(G)(5) and MMC Section 17.44.090(E)(2)]. No parking is required for a JADU regardless of its location in relation to public transit. Additionally, existing parking can be used to accommodate a JADU and such displaced enclosed parking may be replaced with unenclosed parking.

Public transit is defined in the proposed amendments as "*a location, including, but not limited to, a bus stop, where the public may access buses and other forms of transportation that charge set fares, run on fixed routes, and are available to the public*." This definition is from State ADU law.

The Planning Commission discussed adding “major transit stop” which is defined in the State Public Resources Code as follows:

> *21064.3. Major transit stop means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.*

There are 25 transit stops in Malibu from Tuna Canyon to Trancas Canyon Road served by bus Route 534 and none of these stops would meet the definition of a major transit stop, but this may change in the future.

It is important to note that the half mile requirement is for walking distance not a straight line distance between the ADU and the bus stop. In addition, consistent with State law, parking that is displaced by the conversion of a garage to an ADU does not need to be replaced; however, the proposed amendments require replacement parking in two circumstances. An ADU located in a VHFHSZ with only one means of access must provide replacement parking and ADUs within a quarter mile of beach, public accessway, park, trailhead or other public visitor-serving area must provide replacement parking on a one-to-one basis. Given the built out nature of the lots along PCH from the easterly city boundary to the Civic Center, most of the opportunities for ADUs would likely be inside an existing building including garages. Requiring replacement parking near public recreation areas such as the beach minimizes the potential loss of parking for the majority of bus stops along PCH and will help ensure parking for residents does not spill over to the adjacent public streets used by coastal visitors. Staff recommends using the public transit definition as originally proposed.

Comment No. 7 - Further discussion to be conducted on the 18-foot height issues

State law requires that ADUs be allowed at a minimum height of 16 feet. Staff is proposing to use 16 feet as the maximum height for all Building Permit Only projects in the MMC as required by State law. ADU projects processed with either an ADU APR in the MMC or an ADU CDP in the LIP, would be allowed at 18 feet in height and up to 24 or 28 feet with a Site Plan Review. Establishing a 16-foot maximum height for all ADUs would mean that the height of new ADUs would not be consistent with the height of existing second units and existing and new guest houses.

If the Commission is concerned about the impact of the height of an ADU, they could recommend that only one-story ADUs be allowed except in the case of an ADU built over an existing single-family house or attached garage. However, this could result in an increase in impermeable surfaces, construction on steep slopes and expansion of development area as it would prevent property owners from constructing an ADU on top of an existing accessory structure other than a detached garage. Given the proposed change in reporting requirements, the Planning Commission would have an opportunity to

review second story ADUs as part of the SPR process if the application was appealed to them or when the approval of the ADU CDP was reported to the Commission.

Comment No. 8 - Further discussion to be conducted on the allowed size of an ADU

A city is prohibited from creating a square footage maximum for ADUs that is less than 850 square feet of living area for a studio or one-bedroom unit or 1,000 square feet for a two-bedroom unit. The City's current maximum second unit size is 900 square feet. Staff is recommending maximum development square footages of 900 square feet (studio/one bedroom) and 1,200 square feet (two bedroom). This would be consistent with existing second unit requirements and with the square footage allowed for temporary housing for fire rebuilds, some of which are expected to be converted into permanent units in the future. The City does have the option of allowing more square footage for ADUs than State law requires.

Staff does not recommend establishing an 850 square foot maximum for studios and one bedrooms as this would not be consistent with the size of existing second units as well as new and existing guest houses. Staff has evaluated the impact of lowering the maximum size for a two bedroom ADU to 1,000 square feet on Woolsey Fire temporary housing unit applications submitted to the City. There were a total of 69 applications and most were under 850 square feet. There was one unit between 850 and 900 square feet, three units between 900 and 1,000 square feet and nine units were greater than 1,000 square feet. However, not all property owners that applied for temporary housing units moved forward with the proposed unit. For the nine units over 1,000 square feet, seven (1,026, 1,030, 1,039, 1,080, 1,110 and two 1,200 square feet) were issued building permits but only three received finals. In addition, it is possible that some property owners do not intend to convert their temporary housing unit to an ADU and are only living in the unit until their home is reconstructed or they have to remove the unit in order to construct the home.

If the Commission wants to recommend lowering the maximum size of a two-bedroom ADU to 1,000 square feet, the Commission could recommend that language be added exempting properties with a temporary housing unit over 1,000 square feet but less than 1,200 square feet from the 1,000 square foot ADU limit if they obtain a certificate of occupancy for the ADU (converted from an approved temporary housing unit) by a date certain such as the date of the Planning Commission recommended action. The provision could also prevent the relocation of the temporary housing unit unless it was reduced in size to 1,000 square feet.

Comment No. 9 - Make specific changes to the Local Coastal Program proposed amendment including general copy errors and simple drafting mistakes.

The drafts have been reviewed and proofed for errors.

Comment No. 10 - Add the term "legally established" in LIP Section 3.10 (B)(4) regarding a nonconforming zoning definition.

Staff has incorporated this recommendation. This term was also added to MMC Section 17.44.030(D) which mirrors the language in LIP 3.10.(B)(4).

Comment No. 11 - Change title of LIP Section 3.10 F.3. to rental rate reporting, change the language that the owner will be asked to report to the actual rent charged for the ADUs in the prior year, delete the final two sentences, and include language informing the owner of the purpose for the request.

The LIP section now reads as follows:

> *Rental Rate Reporting. To facilitate the City's obligation to identify adequate sites for housing in accordance with Government Code Sections 65583.1 and 65852.2, and to allow ADUs to count towards the City's Regional Housing Needs Assessment (RHNA) requirements, within 90 days after each yearly anniversary of the issuance of the building permit, the owner will be asked to report the actual rent charged for the ADU during the prior year.*

MMC Section 17.44.080(d) was also updated consistent with the new language although JADUs were included since they are regulated in the MMC.

To assist local jurisdictions in determining whether an ADU could be counted towards meeting RHNA requirements, the Southern California Association of Governments (SCAG) published a study[3] of ADU affordability in late 2020 and the state Department of Housing and Community (HCD) is allowing cities to assume that distribution for purposes of RHNA credit. SCAG's analysis is broken down by county, and Los Angeles County is split into coastal and inland. This distribution was used for Malibu's 2021-2029 Housing Element Update heard by the Planning Commission on November 15, 2021.

Comment No. 12 - Explore an option to provide relief without seeking a variance to those applicants with projects that do not meet some or all of the LCP standards contained in LIP Section 3.10(G), in order to address the concerns brought up during public comment.

The concerns brought up during public comment were related to a request to construct an attached ADU that while consistent with State ADU law, was not consistent with the development standards in LIP Section 3.10(G) relative to a reduction in required setbacks and maximum TDSF and impermeable coverage. Since the proposed ADU was not consistent with the LIP standards required for a LIP exemption to apply, it would have required a CDP and could not be approved.

[3] https://scag.ca.gov/sites/main/files/file-attachments/adu_affordability_analysis_120120v2.pdf?1606868527

LIP Section 13.27 allows for Planning Director approval of a Site Plan Review or Minor Modification (MM) under certain circumstances including height increases up to 28 feet (SPR) and reductions in setback and open space requirement by no more than 20 percent, except that front yard setbacks may be reduced by no more than 50 percent and side setbacks shall not be reduced where part of a required view corridor (MM). However, the project under discussion was requesting reduction in the side/rear yard setbacks by more than 20 percent. In addition, LIP standards for TDSF and impermeable coverage were not being met.

If the Commission wants to recommend providing some relief for smaller properties constrained by existing development, a provision could be added that would allow an attached ADU no larger than 800 square feet (size of Building Permit Only ADU) or 500 square feet (size of a JADU) with four-foot rear- and side-yard setbacks and 16 feet in height on lots of 15,000 square feet or less gross lot area with a CDP not an ADU CDP. This would mean these types of ADUs would be reviewed and approved by the Planning Commission not the Director.

Staff discussed the concept of allowing reduced setbacks or increases in TDSF with Coastal staff and they indicated there may be circumstances where reduced setbacks could be beneficial. Specifically if it allowed someone to build on the existing development area instead of outside the area in order to meet setbacks as this would result in increased fuel modification requirements. Coastal staff further indicated it would be important that no coastal resources were impacted by reduced setbacks or increases in TDSF and preferred it only be allowed if there were no other locations on the lot where an ADU could be built without the need for reduced setbacks. The Commission could decide to allow reduced setbacks for all properties regardless of size if they met certain criteria. It would be best to establish objective standards to allow reduced setbacks for parcels. Factors that would need to be considered are fuel modification, grading, ESHA, and other environmental impacts.

If the Commission wants to allow some relief from setbacks or TDSF, they could make that a recommendation to the City Council and staff could develop some objective criteria for the Council to consider.

Another alternative the Commission could consider is providing a deviation request as part of the new ADU ordinances. An applicant could apply for a deviation from certain standards if there was a good cause as to why they could not conform to the standard. A deviation request method has been adopted in the City's Dark Sky Ordinance (MMC Section 17.41). However, recent public concern over gas station lighting applications has caused effectiveness of deviation requests to come into question. Providing a deviation request could open up an application to subjective measures rather than setting straightforward design standards. The variance method already exists for an applicant to apply for relief if there are extraordinary circumstances that prevent them from enjoying rights enjoyed by other in their relative neighborhood. The only difference could be that a deviation request could be approved by the Planning Director, different from a variance

which requires Planning Commission approval. If a deviation process is recommended, staff requests that the Planning Commission provide guidance about what findings would need to be made to grant such a deviation, especially if the Planning Commission recommends that deviations be allowed that would allow the TDSF limitations on a site to be exceeded.

Comment No. 13 - Requested staff provide the amount of ADUs that are likely to result from the proposed amendment.

The proposed amendments will update the LIP, and ensure the MMC is consistent with State law for ADUs; however, second units are already allowed in the City with an ACDP. While the proposed regulations allow for an increase in the size of a two-bedroom ADU, all ADUs processed with a CDP will be required to meet all the other development standards in LIP Section 3.10(G) consistent with existing second unit regulations. Given that detached ADUs will follow the same approval process as second units, staff doesn't anticipate a large increase in the number of applications. There could be an increase in cases where someone wants both a JADU and an ADU but staff has no way of determining which properties might choose to build both.

In December 2020, SCAG released the Housing Element Parcel (HELPR) Tool[4] which is a web-mapping tool developed to help local jurisdictions "understand local use, site opportunities, and environmental sensitivities for aligning housing planning with the state Department of Housing and Community Development (HCD) 6th cycle housing element requirements." The tool has a filter that "provides a rudimentary estimate of which parcels have adequate physical space to accommodate a typical detached ADU only for single-family residential land use. A detailed study conducted by Cal Poly Pomona (CPP) and accessible here[4] conducted an extensive review of State and local requirements and development trends for ADUs in the SCAG region and developed a baseline set of assumptions for estimating how many of a jurisdiction's parcels could accommodate a detached ADU. Please note that these estimates (1) do not include attached or other types of ADUs such as garage conversions or JADUs, and (2) are conducted without screening for site-specific topological, or other constraints, or regard for financial feasibility, or development likelihood."

The baseline assumption is that single-family residential parcels can accommodate a detached ADU if the unbuilt parcel land area exceeds the size of a typical 800 square foot ADU and allows for a four-foot setback surrounding the parcel, a 600 square feet driveway, and a 200 square feet parking stall." No parcels in Malibu met the baseline assumptions.

[4] https://rdp.scag.ca.gov/helpr/?page=page_0

Miscellaneous Revisions

The proposed amendments reviewed by the Commission in May 2021 included a definition of an efficiency kitchen as required for an ADU or JADU. Staff is recommending deleting the current definition of a kitchen and incorporating an efficiency kitchen into a new definition of a kitchen and adding a definition of a wet bar. Providing standards for both a kitchen and wet bar will assist staff in their review of ADUs/JADUs, guest houses, and other accessory structures such as pool houses, gyms or art studios.

The proposed amendments also include revisions to the "Multi-family Residence" definition in both the LCP and the MMC that were previously reviewed by the Commission. That definition provided that for the purposes of the ADU regulations, "multi-family residence" meant a building used by occupancy by two or more families as required by State law but no changes were proposed to the rest of the definition. However, since three or more dwelling units does not account for duplexes which are considered multifamily residences, staff is recommending the following amendment to account for all multifamily residences while specifically excluding ADUs on the same parcel as single-family residences. As a point of information, changing the definition to include duplexes as a multi-family residence would mean that duplexes would be allowed the same number of units as a multi-family building (refer to 3.10(H) in Exhibit A of Attachment 1) both in terms of detached ADUs and ADUs located inside a multi-family structure.

> *"MULTI-FAMILY RESIDENCE - a building or portion thereof used for occupancy by ~~three~~ two or more families living independently of each other and containing ~~three~~ two or more dwelling units. This does not apply to a primary residence and an ADU or guest house on the same parcel."*

In addition to the changes to permitting requirements, other changes to the LCPA and MMC that were attached to the January 18, 2022 staff report include removing the language that limits the number of allowed bedrooms to two consistent with the requirements of State law. In addition, since the overall size of each ADU would be limited, there is no reason to limit the number of bedrooms.

Staff has also revised the provision that requires replacement parking for properties within 0.25 mile of a beach, public accessway, trailhead or other public visitor-serving area (refer to 3.10(G)(5)(d) in Exhibit A of Attachment 1) to include language that this requirement only applies to areas with high on-street parking demand east of Kanan Dume Road. The language "with high on-street parking demand" was in a previous version of the LCPA but the Commission felt a parking study might be needed to identify areas with high on-street parking demand. Given time constraints, staff removed the language. After further consideration, staff is recommending the language be added back in but limited to properties east of Kanan Dume Road, as it's mainly eastern Malibu that has high on-street parking demand. While the area around Zuma Beach also has high parking demand, all of the lots directly north of Pacific Coast Highway are large enough to accommodate

replacement parking onsite. Alternatively, the Commission may consider replacement parking based on zoning. For instance, Rural Residential zoning may not need to provide replacement parking given that these are typically larger lots. If the Commission felt a parking study should be conducted, they could recommend this study be completed before the City Council considers the amendments.

ENVIRONMENTAL REVIEW: Pursuant to Public Resources Code Section 21080.9, California Environmental Quality Act (CEQA) does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCP amendment. This application is for an amendment to the LCP, which must be certified by the CCC before it takes effect. LIP Section 1.3.1 states that the provisions of the LCP take precedence over any conflict between the LCP and the City's Zoning Ordinance. In order to prevent inconsistency between the LCP and the City's Zoning Ordinance, if the LCP amendment is approved, the City must also approve the corollary amendment to the Zoning Ordinance. This amendment is necessary for the preparation and adoption of the LCPA and because they are entirely dependent on, related to, and duplicative of the exempt activity, they are subject to the same CEQA exemption.

In addition, the project is exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 21080.17, which states that the CEQA does not apply to the adoption of local ordinances regulating construction of second units and by CEQA Section 15282(h) that exempts adoption of an ordinance regarding second units in single-family and multifamily residential zones.

Furthermore, the Planning Director has analyzed the proposed amendments. CEQA applies only to projects which have the potential for causing a significant effect on the environment. Pursuant to CEQA Guidelines Section 1 5061(b)(3), 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. The Planning Director determined that the proposed amendments are required by State law and will not result in changes from existing development standards, such as density limits and environmental resource protection standards; consequently, there is no possibility the amendment will have a significant effect on the environment and accordingly, the exemption set forth in Section 15061(b)(3) applies.

CORRESPONDENCE: Written correspondence received prior to the January 18, 2022 Planning Commission meeting is compiled as Attachment 6. All written correspondence received prior to the March 7, 2022 meeting is compiled as Attachment 7.

PUBLIC NOTICE: On November 11, 2021, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and mailed to all interested parties (Attachment 8).

Additionally, staff created a flyer that was posted on the City's social media pages as well as distributed to members of the public via mail in order to encourage public participation. A two-week ad in the Malibu Times was also published.

CONCLUSION: Staff recommends that the Planning Commission adopt Resolution No. 22-08 (Attachment 1) recommending that the City Council approve LCPA No. 18-002 and ZTA No. 18-004 to update ADU regulations to be consistent with State law.

ATTACHMENTS:

1. Planning Commission Resolution No. 22-08 with Exhibits A (LCPA) and B (ZTA)
2. California Coastal Commission January 21, 2022 Memorandum
3. Housekeeping Amendments
4. Summary of ADU Regulations
5. VHFHSZ -Two Means of Access Illustration
6. Correspondence submitted prior to the January 18, 2022 Planning Commission meeting
7. Correspondence submitted prior to the March 7, 2022 Planning Commission meeting
8. Public Hearing Notice

CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 22-08

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU DETERMINING THE AMENDMENTS ARE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND RECOMMENDING THAT THE CITY COUNCIL APPROVE LOCAL COASTAL PROGRAM AMENDMENT NO. 18-002 AND ZONING TEXT AMENDMENT NO. 18-004, FOR AN AMENDMENT TO THE LOCAL COASTAL PROGRAM AND TO THE MALIBU MUNICIPAL CODE TITLE 17 (ZONING) TO UPDATE REGULATIONS RELATED TO ACCESSORY DWELLING UNITS

The Planning Commission of the City of Malibu does hereby find, order and resolve as follows:

Section 1. Recitals.

A. On June 11, 2018, the City Council adopted Resolution No. 18-28 to: 1) initiate Zoning Text Amendment (ZTA) No. 18-004 and Local Coastal Program (LCP) Amendment No. 18-002, to update accessory dwelling unit regulations consistent with State law, and 2) direct the Planning Commission to schedule a public hearing regarding the ZTA and provide a recommendation to the Council whether to approve, modify, or reject the amendment.

B. On July 17, 2018, the Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) met to discuss the proposed amendments to the MMC and LCP and recommended that the City's existing second unit regulations be updated consistent with Accessory Dwelling Unit State law.

C. On August 9, 2018, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and mailed to interested parties.

D. On August 30, 2018, a Notice of Availability of LCPA Documents was published in a newspaper of general circulation within the City of Malibu and mailed to interested parties.

E. On September 4, 2018, the Planning Commission held a duly noticed public hearing to discuss new accessory dwelling unit (ADU) laws. The Planning Commission provided direction to staff and requested additional information. The Planning Commission also found that ADUs may provide units that can be utilized to meet the City's Regional Housing Needs Allocation (RHNA) and recommended that short-term rentals be prohibited in accessory dwelling units.

F. Between October 2018 and February 2020, the proposed amendments were noticed to be considered by the Planning Commission, however, the hearings were rescheduled.

G. On March 16, 2020, due to the COVID-19 pandemic, all public hearings scheduled for the March 16, 2020 Regular Planning Commission were continued to the April 6, 2020 Regular Planning Commission meeting.

H. On April 6, 2020, the Planning Commission continued the public hearing to a date uncertain.

I. On May 20, 2021, the Planning Commission held a duly noticed public hearing on the proposed ADU amendments. The Planning Commission provided direction to staff and requested additional information.

J. On November 11, 2021, a Notice of Planning Commission Public Hearing and Notice of Availability of LCP Documents was published in a newspaper of general circulation within the City of Malibu and mailed to interested parties.

K. On December 6, 2021, the Planning Commission continued the public hearing to the January 18, 2022 Regular Planning Commission meeting.

L. On January 18, 2022, the Planning Commission continued the public hearing to the March 7, 2022 Regular Planning Commission meeting.

Section 2. Environmental Review.

Pursuant to Public Resources Code Section 21080.9, California Environmental Quality Act (CEQA) does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCP amendment. This application is for an amendment to the LCP, which must be certified by the California Coastal Commission (CCC) before it takes effect. LCP Local Implementation Plan (LIP) Section 1.3.1 states that the provisions of the LCP take precedence over any conflict between the LCP and the City's Zoning Ordinance. In order to prevent inconsistency between the LCP and the City's Zoning Ordinance, if the LCP amendment is approved, the City must also approve the corollary amendment to the Zoning Ordinance. This amendment is necessary for the preparation and adoption of the LCPA and because they are entirely dependent on, related to, and duplicative of the exempt activity, they are subject to the same CEQA exemption.

In addition, the project is exempt from the requirements of the CEQA pursuant to CEQA Guidelines Section 21080.17, which states that the CEQA does not apply to the adoption of local ordinances regulating construction of second units and by CEQA Section 15282(h) that exempts adoption of an ordinance regarding second units in single-family and multifamily residential zones.

Furthermore, the Planning Commission has analyzed the proposed amendments. CEQA applies only to projects which have the potential for causing a significant effect on the environment. Pursuant to CEQA Guidelines Section 1 5061(b)(3), 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. The Planning Commission determined that the proposed amendments are required by State law and will not result in changes from existing development standards, such as density limits and environmental resource protection standards; consequently, there is no possibility the amendment will have a significant effect on the environment and accordingly, and the exemption set forth in Section 15061(b)(3) applies.

Section 3. Local Coastal Program Findings.

Based on evidence in the whole record, the Planning Commission hereby finds that the proposed amendment meets the requirements of, and is in conformance with, the policies and requirements of Chapter 3 of the California Coastal Act.

A. The amendments to the LCP meet the requirements of, and are in conformance with the goals, objectives and purposes of the LCP. Updated development standards specific to accessory dwelling units ensure that development of affordable housing may occur in compliance with State housing element law, while maintaining standards to require that uses within the City's jurisdiction of the Coastal Zone advance the overarching goal of protecting coastal resources.

B. As a part of the LIP, the updated accessory dwelling unit development standards ensure that future development projects and land uses within specific zoning districts conform to applicable LCP policies, goals, and provisions, while taking into consideration the protection and enhancement of visual resources, public access, and recreation opportunities. Incorporating specific requirements for accessory dwelling units achieves LIP Sections 1.2(D) and (G) (guides future growth and development), LIP Section 1.2(F) (promotes public health, safety, and general welfare), and LIP Section 1.2(K) (assures adequate public uses, facilities, and improvements).

Section 4. Zoning Text Amendment Findings.

Pursuant to Malibu Municipal Code Section 17.74.040, the Planning Commission hereby makes the following findings and recommends to the City Council that the MMC be amended as stated in Exhibit A of this resolution.

A. The subject zoning text amendment is consistent with the objectives, policies, general land uses and programs specified in the General Plan. The proposed amendment serves to enhance the Malibu General Plan Mission Statement, protect public safety and preserve Malibu's natural and cultural resources.

B. The Planning Commission held a public hearing, reviewed the subject zoning text amendment application for compliance with the City of Malibu General Plan, Malibu Municipal Code and the Malibu Local Coastal Program, and finds that the zoning text amendment is consistent and recommends approval.

Section 5. Planning Commission Action.

Based on the foregoing findings and evidence contained in the record, the Planning Commission hereby recommends that the City Council approve the Local Coastal Program and Zoning Text Amendments contained in "EXHIBIT A" and "EXHIBIT B".

Section 6. The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 7th day of March 2022.

KRAIG HILL, Planning Commission Chair

ATTEST:

REBECCA EVANS, Recording Secretary

Exhibit A: Local Coastal Program Amendments
Exhibit B: Title 17 – Zoning Code Amendments

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 22-08 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 7th day of March 2022, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

REBECCA EVANS, Recording Secretary

LOCAL COASTAL PROGRAM LAND USE PLAN

CHAPTER 3—MARINE AND LAND RESOURCES

g. New Development

3.42 New development shall be sited and designed to minimize impacts to ESHA by:

a. Minimizing grading and landform alteration, consistent with Policy 6.8.

b. Minimizing the removal of natural vegetation, both that required for the building pad and road, as well as the required fuel modification around structures.

c. Limiting the maximum number of structures to one main residence, ~~one second residential structure,~~ one accessory dwelling unit or one guest house, and accessory structures such as, stable, corral, pasture, workshop, gym, studio, pool cabana, office, detached garages, or tennis court, provided that such accessory structures are located within the approved development area and structures are clustered to minimize required fuel modification.

d. Minimizing the length of the access road or driveway, except where a longer roadway can be demonstrated to avoid or be more protective of resources.

e. Grading for access roads and driveways should be minimized; the standard for new on-site access roads shall be a maximum of 300 feet or one-third the parcel depth, whichever is less. Longer roads may be allowed on approval of the City Planning Commission, upon recommendation of the Environmental Review Board and the determination that adverse environmental impacts will not be incurred. Such approval shall constitute a conditional use to be processed consistent with the LIP provisions.

f. Prohibiting earthmoving operations during the rainy season, consistent with Policy 3.47.

g. Minimizing impacts to water quality, consistent with Policies 3.94—3.155. (Resolution No. 07-04)

CHAPTER 5—NEW DEVELOPMENT

2. Land Use Plan Provisions

The LUP provides parameters for new development within the City. The Land Use Plan Map designates the allowable land use, including type, maximum density and intensity, for each parcel. Land use types include local commercial, visitor serving commercial, residential, institutional, recreational, and open space. The LUP describes the allowable uses in each category.

The commercial development policies provide for pedestrian and bicycle circulation to be provided within new commercial projects in order to minimize vehicular traffic. Visitor serving commercial uses shall be allowed in all commercial zones in the City and shall be given priority over other non-coastal dependent development. Parking facilities approved for office or other commercial developments shall be permitted to be used for public beach parking on weekends and other times when the parking is not needed for the approved uses.

The LUP encourages and provides for the preparation of a specific plan or other comprehensive plan for the Civic Center area. The Land Use Plan Map designates this area for Community Commercial, General Commercial, and Visitor- Serving Commercial uses. By preparing a Specific Plan a wider range and mix of uses, development standards, and design guidelines tailored to the unique characteristics of the Civic Center could be provided for this area as a future amendment to the LCP.

The LUP policies address new residential development. The maximum number of structures allowed in a residential development is one main residence, one ~~second residential structure~~ accessory dwelling unit or one guest house, and additional accessory structures provided that all such structures are located within the approved development area and clustered to minimize required fuel modification, landform alteration, and removal of native vegetation.

The LUP provides for a lot retirement program designed to minimize the individual and cumulative impacts of the potential buildout of existing parcels that are located in ESHA or other constrained areas and still allow for new development and creation of parcels in areas with fewer constraints. This includes the Transfer of Development Credit (TDC) Program, and an expedited reversion to acreage process. The TDC program will be implemented on a region-wide basis, including the City as well as the unincorporated area of the Santa Monica Mountains within the Coastal Zone. New development that results in the creation of new parcels, or multi-family development that includes more than one unit per existing parcel, except for affordable housing units, must retire an equivalent number of existing parcels that meet the qualification criteria of the program. Finally, an expedited procedure will be implemented to process reversion to acreage maps.

The LUP policies require that land divisions minimize impacts to coastal resources and public access. Land divisions include subdivisions through parcel or tract map, lot line adjustments, and certificates of compliance. Land divisions are only permitted if they are approved in a coastal development permit. A land division cannot be approved unless every new lot created would contain an identified building site that could be developed consistent with all policies of the LCP. Land divisions must be designed to cluster development, to minimize landform alteration, to

minimize site disturbance, and to maximize open space. Any land division resulting in the creation of additional lots must be conditioned upon the retirement of development credits (TDCs) at a ratio of one credit per new lot created. Certificates of compliance must meet all policies of the LCP.

The LUP policies provide for the protection of water resources. New development must provide evidence of an adequate potable water supply. The use of water wells to serve new development must minimize individual and cumulative impacts on groundwater supplies and on adjacent or nearby streams, springs or seeps and their associated riparian habitats. Water conservation shall be promoted. Reclaimed water may be used for approved landscaping, but landscaping or irrigation of natural vegetation for the sole purpose of disposing of reclaimed water is prohibited.

Communication facilities are provided for as a conditional use in all land use designations. All facilities and related support structures shall be sited and designed to protect coastal resources, including scenic and visual resources. Co-location of facilities is required where feasible to avoid the impacts of facility proliferation. New transmission lines and support structures will be placed underground where feasible. Existing facilities should be relocated underground when they are replaced.

Finally, the New Development policies provide for the protection and preservation of archaeological and paleontological resources. Measures to avoid and/or minimize impacts to identified archaeological and paleontological resources must be incorporated into the project and monitoring must be provided during construction to protect resources.

h. Design guidelines, including architectural design, lighting, signs, and landscaping.

i. Provisions for mixed use development. (Resolution No. 07-04)

6. Residential Development Policies

5.20 All residential development, including land divisions and lot line adjustments, shall conform to all applicable LCP policies, including density provisions. Allowable densities are stated as maximums. Compliance with the other policies of the LCP may further limit the maximum allowable density of development.

5.21 The maximum number of structures permitted in a residential development shall be limited to one main residence, one accessory dwelling unit or guest house, ~~second residential structure~~ and accessory structures such as stable, workshop, gym, studio, pool cabana, office, detached garages, or tennis court provided that all such structures are located within the approved development area and structures are clustered to minimize required fuel modification.

5.22. ~~Second residential units~~ Accessory dwelling units ~~guesthouses, granny units, etc.)~~ shall be limited in size to a maximum of 900 square feet for a studio or one bedroom and 1,200 square feet for two or more bedrooms. Guest houses shall be limited in size to a maximum of 900 square feet. The maximum square footage shall include the total floor area of all enclosed space, including lofts, mezzanines, and storage areas. ~~Detached g~~ Garages~~, including garages provided as part of that~~ that are part of an ~~second residential unit~~ accessory dwelling unit or guest house, shall not exceed 400

square feet (two-car) maximum. The area of a garage provided as part of an ~~second residential unit~~ accessory dwelling unit or guest house shall not be included in the 1,200 or 900 square foot limit, respectively.

5.23 ~~A minimum of o~~ One onsite enclosed or unenclosed parking space shall be required for the exclusive use of an ~~any second residential unit~~ accessory dwelling unit or guest house unless otherwise exempted under LIP Section 3.10(G)(5)(b).

5.24 New development of an s~~econd residential unit~~ accessory dwelling unit or guest house or other accessory structure that includes plumbing facilities shall demonstrate that adequate private sewage disposal can be provided on the project site consistent with all of the policies of the LCP.

5.25 In order to protect the rural character, improvements, which create a suburban atmosphere such as sidewalks and streetlights, shall be avoided in any rural residential designation.

LOCAL IMPLEMENTATION PLAN

CHAPTER 2—DEFINITIONS

2.1. GENERAL DEFINITIONS

ACCESSORY DWELLING UNIT - an attached or a 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. An accessory dwelling unit also includes the following:

1. An efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code and the California Building Code; and

2. A manufactured home, as defined in Section 18007 of the California Health and Safety Code.

ACCESSORY DWELLING UNIT, ATTACHED - an accessory dwelling unit that is physically attached to the primary dwelling unit and share an interior wall or as an additional story above the primary dwelling unit, but which has independent, direct access from the exterior.

ACCESSORY DWELLING UNIT, DETACHED - an accessory dwelling unit that is not an attached accessory dwelling unit.

CAR SHARE VEHICLE - a motor vehicle that is operated as part of a regional fleet by a public or private car-sharing company or organization and provides hourly or daily service. A car share vehicle does not include vehicles used as part of ride-hailing companies such as Uber or Lyft.

COMPLETE INDEPENDENT LIVING FACILITIES - permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multi-family dwelling is or will be situated.

JUNIOR ACCESSORY DWELLING UNIT - a residential unit that

1. is no more than 500 square feet in size;

2. is contained entirely within an existing or proposed single-family structure;

3. has a separate exterior entrance;

4. includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure; and

5. includes an efficiency kitchen.

KITCHEN, INCLUDING AN EFFICIENCY KITCHEN - an area within a structure that is used or designed to be used for the preparation or cooking of food and that contains each of the following:

1. A cooking facility with appliances including, but not limited to: ovens, convection ovens, stoves, stove tops, built-in grills or similar appliances.

2. A food preparation counter or counters that total at least 15 square feet in area.

3. Food storage cabinets that total at least 30 square feet of shelf space.

~~KITCHEN - a room or space within a building intended to be used for the cooking and preparation of food.~~

LIVING AREA - the interior habitable area of a dwelling unit, including finished basements ~~and~~ or attics but does not include unfinished basements or attics, rooms with floor to ceiling heights less than 6 feet, ~~with a~~ garages or accessory structures.

MULTI-FAMILY RESIDENCE - a building or portion thereof used for occupancy by ~~three~~ two or more families living independently of each other and containing ~~three~~ two or more dwelling units. This does not apply to a primary residence and an ADU or guest house on the same parcel.

PASSAGEWAY - a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

PUBLIC TRANSIT - a location, including, but not limited to, a bus stop, where the public may access buses and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

~~SECOND UNIT - an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single family dwelling is situated. The maximum living area of a second unit shall not exceed nine hundred (900) square feet, including any mezzanine or storage space. A second unit may include a garage not to exceed four hundred (400) sq. ft. The square footage of the garage shall not be included in the maximum living area~~

TANDEM PARKING - two or more automobiles parked on a driveway or in any other location on a lot, lined up behind one another.

VERY HIGH FIRE HAZARD SEVERITY ZONE - a zone as defined in Government Code 51177 and designated by Ordinance 299.

WET BAR - a single sink and refrigerator no greater than 5 cubic feet in size with cabinets and/or counter top area not exceeding 6 lineal feet. A wet bar shall not include a refrigerator in excess of 5 cubic feet in size or a kitchen sink greater than 2 square feet in size, or a gas or electric range, stove top and/or oven (but may include a microwave oven).

CHAPTER 3—ZONING DESIGNATIONS AND PERMITTED USES

Q. Planned Development (PD) Zone

1. Purpose

The PD District is intended to provide for a mix of residential and recreational development, consistent with the PD Land Use Designation in Chapter 5 (Section C.2) of the Land Use Plan consisting of five single-family residences and 1.74 acres of recreational area located east of Malibu Bluffs Park and south of Pacific Coast Highway. The PD District consists of the land designated as Assessor Parcel Numbers (APNs) 4458-018-019, 4458-018-002, and 4458-018-018, known as Malibu Coast Estate, and formerly known as the "Crummer Trust" parcel.

2. Permitted Uses

The uses and structures permitted in Malibu Coast Estate are as follows. Lot numbers are as identified on the "Malibu Coast Estate Planned Development Map 1" of this LIP.

a. Lot Nos. 1—5

i. One single-family residence per lot.

ii. Accessory uses (~~one second unit or~~ guest house ~~per lot~~ in accordance with Section 3.6(N)(1), garages, swimming pools, spas, pool houses, cabanas, water features, gazebos, storage sheds, private non-illuminated sports courts, noncommercial greenhouses, gated driveways, workshops, gyms, home studios, home offices, and reasonably similar uses normally associated with a single-family residence, as determined by the Planning Director).

iii. Accessory dwelling units in accordance with Section 3.10.

~~iii.~~ iv. Domestic animals, kept as pets.

~~iv.~~ v. Landscaping.

b. Lot No. 6

i. Uses and structures maintained by either the owners of Lots 1—5 or the homeowners' association formed to serve the residential development within Malibu Coast Estate, including a guard house, private access road, gates (including entry gates), fencing, visitor parking, landscaping, guardhouse parking, community utilities, informational and directional signage, private open space, lighting and wastewater treatment facilities serving uses within Malibu Coast Estate.

c. Lot No. 7

i. Parks and public open space, excluding community centers.

ii. Active and passive public recreational facilities, such as ball fields, skate parks, picnic areas, playgrounds, walkways, restrooms, scoreboard, sport court fencing, parking lots, and reasonably similar uses as determined by the Planning Director. Night lighting of recreational facilities shall be prohibited, except for the minimum lighting necessary for public safety.

iii. Onsite wastewater treatment facilities.

3. Lot Development Criteria

All new lots created in Malibu Coast Estate shall comply with the following criteria:

a. Lot Nos. 1—5

i. Minimum lot area: 113,600 square feet (2.60 acres).
ii. Minimum lot width: 115 feet.
iii. Minimum lot depth: 480 feet.

b. Lot No. 6

i. Minimum lot area: 125,700 square feet (2.88 acres).
ii. Minimum lot width: 625 feet.
iii. Minimum lot depth: 100 feet.

c. Lot No. 7

i. Minimum lot area: 75,640 square feet (1.74 acres).
ii. Minimum lot width: 460 feet.
iii. Minimum lot depth: 100 feet.

4. Property Development and Design Standards

Development in Malibu Coast Estate shall be subject to all applicable standards of the Malibu LIP, unless otherwise indicated in this LIP Section 3.3(Q). The following development standards shall replace the corresponding development standards otherwise contained in each noted LIP Section for those lots in Malibu Coast Estate.

a. Lot Nos. 1—5

i. Development Footprint and Structure Size (Replaces corresponding standards in LIP Section 3.6(K))

a) The total development square footage (TDSF) on each of Lot Nos. 1—5 shall not exceed the following square footage per lot:

Lot 1 – 10,052 sq. ft.
Lot 2 – 9,642 sq. ft.
Lot 3 – 9,434 sq. ft.
Lot 4 – 9,513 sq. ft.
Lot 5 – 10,990 sq. ft.

b) Combinations of Basements, Cellars and/or Subterranean Garages. If any combination of basements, cellars, and/or subterranean garages is proposed, the initial one-thousand (1,000) square feet of the combined area shall not count toward TDSF. Any additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at ratio of one square foot for every two square feet proposed.

c) Covered areas, such as covered patios, eaves, and awnings that project up to six feet from the exterior wall of the structure shall not count toward TDSF; if the covered areas project more than six feet, the entire covered area (including the area within the six foot projection) shall be included in TDSF.

d) The development footprint on each lot (Lot Nos. 1—5) shall substantially conform to that indicated on "Malibu Coast Estate Planned Development Map 1" of this LIP. Structures on Lot 5 shall be setback a minimum of 190 feet from the edge of the bluff as identified on "Malibu Coast Estate Planned Development Map 1" in order to ensure that impacts to public views of the eastern Malibu coastline as seen from Malibu Bluffs Park are minimized. The structural setback on Lot 5 does not apply to at grade improvements or low profile above-grade improvements for accessory uses not to exceed 10 feet in height.

ii. Setbacks (Replaces corresponding standards in LIP Section 3.6F)

a) Front yard setbacks shall be at least twenty (20) percent of the total depth of the lot measured from the property line abutting the street, or sixty-five (65) feet, whichever is less. However, the front yard setback for Lot 5 shall be at least forty-three (43) feet.

b) Side yard setbacks shall be cumulatively at least twenty-five (25) percent of the total width of the lot but, in no event, shall a single side yard setback be less than ten (10) percent of the width of the lot.

c) Rear yard setbacks shall be at least fifteen (15) percent of the lot depth.

d) Parkland setbacks in LIP Section 3.6(F)(6) shall not apply.

iii. Structure Height (Replaces corresponding standards in LIP Section 3.6(E))

a) Every residence and every other building or structure associated with a residential development (excluding chimneys), including satellite dish antenna, solar panels and rooftop equipment, shall not be higher than eighteen (18) feet, except the easternmost approximately 2,500 sq. ft. of the residence

on Lot 2 and the southwestern corner of the residence on Lot 5 shall not be higher than 15 feet, as indicated on "Malibu Coast Estate Planned Development Map 1" of this LIP. Height is measured from natural or finished grade, whichever is lower.

b) Mechanical equipment, including screens may not exceed roof height. Roof-mounted mechanical equipment shall be integrated into the roof design and screened.

c) In no event shall the maximum number of stories above grade be greater than two. Basements and subterranean garages shall not be considered a story.

iv. Grading (Replaces corresponding standards in LIP Section 8.3(B))

a) Notwithstanding other provisions of this Code, all grading associated with the berm, ingress, egress, including safety access, shall be considered exempt grading.

b) Non-exempt grading shall be limited to 2,000 cubic yards per lot.

c) Net export shall be limited to 3,500 cubic yards per lot.

v. Impermeable Coverage, Landscaping, and Berm

a) The impermeable coverage requirement in LIP Section 3.6(I) shall apply.

b) In addition to the requirements of LIP Section 3.10, site landscaping shall be designed to minimize views of the approved structures as seen from public viewing areas, including the use of native trees to screen approved structures. Landscaping and trees shall be selected, sited, and maintained to not exceed 25 feet.

c) A natural-looking earthen berm that is 4 feet in height (except for the northernmost 30 foot long portion on Lot 1 that shall be no less than 2 feet in height) above finished grade shall be constructed along the east side of all approved structures on Lots 1 and 2 to minimize views of the development from downcoast public viewing locations. The location and height of the berm shall substantially conform to that indicated on "Malibu Coast Estate Planned Development Map 1" of this LIP. The berm shall be vegetated with lower-lying native species that blend with the natural bluff landscape.

vi. Parking (In addition to the parking standards of LIP Section 3.14)

a) Two enclosed and two unenclosed parking spaces. The minimum size for a residential parking space shall be 18 feet long by 10 feet wide.

b) ~~One enclosed or unenclosed parking space~~ ~~f~~ For a guest house ~~or second unit~~ see Section 3.6(N)(1)(d).

c) For an accessory dwelling unit see Section 3.10.

vii. Colors and Lighting (In addition to the standards of LIP Section 6.5(B))

a) Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check and must be approved by the Planning Director prior to issuance of a building permit. All windows shall be comprised of non-glare glass.

b) Lighting must comply with LIP Section 6.5(G).

viii. Permit Required

To insure the protection of scenic and visual resources in accordance with the provisions of the LCP, any future improvements to structures or significant changes to landscaping beyond that authorized by the coastal development permit (CDP) for each residential lot (Lots 1-5), which would ordinarily be exempt from a CDP pursuant to LIP Section 13.4.1, shall be subject to a new CDP or permit amendment.

3.6. RESIDENTIAL DEVELOPMENT STANDARDS

All single-family and multiple-family residences shall be subject to the following development standards:

D. The minimum floor area of a residential unit shall be as follows:

1. For a single-family residence, not less than 800 square feet, exclusive of any appurtenant structures. This minimum does not apply to accessory dwelling units.

2. For each multi-family dwelling unit, not less than 750 square feet, exclusive of any appurtenant structures. This minimum does not apply to accessory dwelling units.

E. thru M. – no changes

N. Accessory Structures. Accessory structures identified as being permitted within any zone may be established only if they are clearly accessory to a primary permitted or conditionally permitted use established concurrent with or prior to establishment of accessory use.

~~1. Second Residential Units~~

~~a. Second residential unit includes a guest house or a second unit, as defined in Section 2.1 of the Malibu LIP.~~

~~b. A maximum of one second residential unit may be permitted as an accessory to a permitted or existing single family dwelling. Development of a second residential unit shall require that a primary dwelling unit be developed on the lot prior to or concurrent with the second residential unit.~~

~~c. Development Standards~~

~~i. Siting~~

~~Any permitted second residential unit shall be located within the approved development area for the project site and shall be clustered with the primary dwelling unit and any other approved structures to minimize required fuel modification.~~

~~ii. Maximum Living Area~~

~~The maximum living area of a second residential unit shall not exceed 900 square feet, including the total floor area of all enclosed space, including any mezzanine or storage space. The maximum living area shall not include the area of a garage included as part of the second residential unit.~~

~~iii. Parking~~

~~a) A minimum of one on-site parking space shall be provided for the exclusive use of a second residential unit.~~

~~b) One garage not to exceed 400 square feet in size may be permitted as part of a second residential unit.~~

1. Guest houses

a. Development of a guest house, as defined in Section 2.1, shall require that a primary dwelling unit be developed on the same lot prior to or concurrent with ~~the~~ the guest house.

b. Only one guest house is allowed per lot. Guest houses are not allowed on properties with an accessory dwelling unit.

c. Development Standards

i) Siting. Any permitted guest house shall be located within the approved development area for the project site and shall be clustered with the primary dwelling unit and any other approved structures to minimize required fuel modification. All guest houses must comply with residential development standards in Section 3.6.

ii) Maximum Size. The maximum square footage of a guest house shall not exceed 900 square feet. The maximum square footage shall include interior and exterior walls, basements, mezzanines, storage space, and any space with a height clearance (floor to ceiling height dimension) above six feet. The area of a garage provided as part of the guest house, exterior decks, covered patios or overhangs that are attached to the structure shall not be included in the 900 square foot limit. The maximum square footage of a guest house, garage and other attached structures that are otherwise considered total development square footage shall be included in the overall total development square footage for the lot.

iii) A 10-foot separation between the guest house and any other structure shall be maintained if the parcel is within a Very High Fire Hazard Severity Zone.

d. Parking

i) A minimum of one off-street enclosed or unenclosed parking space shall be provided for the exclusive use of a guest house.

ii) One garage not to exceed 400 square feet in size may be permitted as part of a guest house.

3.10. ACCESSORY DWELLING UNITS

Accessory Dwelling Units - The following regulations shall apply to accessory dwelling units (ADUs) approved under this section.

A. Purpose. The purpose of this section is to allow and regulate ADUs in compliance with California Government Code Sections 65852.2 and 65852.22. Because the City of Malibu lies entirely within the Coastal Zone, every ADU application in the City will be subject to an analysis for compliance with the Local Coastal Program (LCP) and Coastal Act. State law is explicit about the Coastal Act not being preempted by the State's ADU statute (Government Code Section 65852.2, subdivision (j).) The entire City of Malibu is located in a designated "Very High Fire Hazard Severity Zone", and this section ensures that ADUs are developed and operated on adequate sites, at proper and desirable locations, and that the goals and objectives of the LCP are met.

B. Effect of Conforming. An ADU that conforms to the standards in this section will be:

1. Deemed to be consistent with the City's General Plan and zoning designation for the lot on which the ADU is located.

2. Deemed not to exceed the allowable density for the lot on which the ADU is located.

3. Considered not to be subject to the application of any local ordinance, policy, or program to limit residential growth.

4. Permitted to maintain a nonconforming zoning condition, except as provided in LIP Section 3.10(G)(3). For purposes of this paragraph 3.10 B.4, "nonconforming zoning condition" means physical improvement on a property that does not conform with current zoning standards. This does not prevent the City from enforcing compliance with applicable building standards in accordance with Health and Safety Code Section 17980.1

C. Definitions. Definition of terms used in this Section can be found at Section 2.1 – General Definitions.

D. Areas Permitted. ADUs shall be allowed on lots zoned to allow single-family or multi-family dwelling residential use. These areas include Rural Residential (RR), Single Family (SF), Multi-Family (MF), Multi-Family Beach Front (MFBF), and areas designated for single family residential use as part of a Planned Development (PD) zone.

E. Coastal Development Permit required.

1. An accessory dwelling unit coastal development permit (ADU CDP) issued in accordance with Section 13.31 shall be required for ADUs. An ADU or JADU created from habitable space and located entirely within an existing single-family residence which does not change the building envelope is not considered development and does

not require an ADU CDP. Unfinished basements or attics, rooms with floor to ceiling heights less than 6 feet and garages would not be considered habitable space. ADUs located in multifamily dwellings shall require an ADU CDP.

2. The City may charge a fee to reimburse it for costs incurred in processing ADU CDP permits, including the costs of adopting or amending the City's ADU ordinance. The ADU CDP permit processing fee is determined by the City Council by resolution.

F. General Requirements. The following general requirements apply to all ADUs:

1. Zoning. A detached ADU shall be located within the required development area for the project site and shall be clustered with the primary dwelling unit and any other approved structures to minimize required fuel modification.

2. Fire Sprinklers. Fire sprinklers are required in an ADU if sprinklers are required in the primary residence or by the Fire Department.

3. Rental Term. An ADU may not be rented for a term that is shorter than 30 days.

4. Rental Rate Reporting. To facilitate the City's obligation to identify adequate sites for housing in accordance with Government Code Sections 65583.1 and 65852.2, and to allow ADUs to count towards the City's Regional Housing Needs Assessment (RHNA) requirements, within 90 days after each yearly anniversary of the issuance of the building permit, the owner will be asked to report the actual rent charged for the ADU during the prior year.

5. No Separate Conveyance. An ADU may be rented, but no ADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all of the dwellings (in the case of a multi-family lot).

6. Septic System. If the ADU is required to connect to an onsite wastewater treatment system, the owner must include a percolation test completed within the last five years with the ADU application or, if the percolation test has been recertified, within the last 10 years. The ADU shall comply with all applicable requirements for wastewater treatment systems.

7. Deed Restriction. Prior to issuance of a building permit for an ADU, a deed restriction must be recorded against the title of the property in the County Recorder's office and a copy filed with the Director. The deed restriction must run with the land and bind all future owners. The form of the deed restriction will be provided by the City and must provide that:

   a. The ADU may not be sold separately from the primary dwelling.

   b. The ADU must remain an ADU unless City approval is obtained to convert the structure to a different accessory structure.

c. An ADU created cannot be rented for less than 30 days.

d. The ADU is restricted to the approved size unless City approval obtained to increase size.

e. The deed restriction runs with the land and may be enforced against future property owners.

f. The deed restriction may be removed if the owner eliminates the ADU as evidenced by, for example, removal of the kitchen facilities. To remove the deed restriction, an owner may make a written request of the Director, providing evidence that the ADU has in fact been eliminated. The Director may then determine whether the evidence supports the claim that the ADU has been eliminated. Appeal may be taken from the Director's determination consistent with other provisions of the LCP. If the ADU is not entirely physically removed, but is only eliminated by virtue of having a necessary component of an ADU removed, the remaining structure and improvements must otherwise comply with applicable provisions of this LCP.

g. The deed restriction is enforceable by the Director or his or her designee for the benefit of the City. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the City is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining the use of the ADU in violation of the recorded restrictions or abatement of the illegal unit.

G. ADU Development Standards. The following development standards apply to ADUs. All requirements of the Malibu LIP that are consistent with the criteria listed below shall remain in effect. If there is a conflict between the standards of this Section 3.10(G) and standards that protect coastal resources, the requirements which are most protective of coastal resources shall prevail.

1. Maximum Size.

a. The maximum square footage of an ADU shall be 900 square feet for a studio or one bedroom and 1,200 square feet for two or more bedrooms. The maximum square footage shall include interior and exterior walls, basements, mezzanines, storage space, and any space with a height clearance (floor to ceiling height dimension) above six feet. The area of a garage (400 square feet maximum) provided as part of accessory dwelling unit and exterior decks or overhangs that are attached to the structure shall not be included in the 900 or 1,200 square foot limit. The maximum square footage of the ADU, garage, and other attached structures that are otherwise considered total development square footage shall be included in the overall total development square footage for the lot.

b. An ADU that is attached to the primary dwelling is limited to 50 percent of the living area of the existing primary dwelling.

c. Application of TDSF, impermeable coverage, and other development standards may further limit the size of the ADU.

d. The maximum size of an ADU in a converted existing detached accessory structure or primary dwelling shall not exceed the size limits provided in the other paragraphs of this subsection G(1).

2. Height

a. No ADU may exceed 18 feet in height above grade as measured from existing or finished grade, whichever results in the lower building height.

b. Pursuant to Section 13.27 of the Malibu LIP (Site Plan Review), the Director may allow heights up to 24 feet for flat roofs and 28 feet for pitched or sloped roofs. In no event shall the maximum number of stories above grade be greater than two.

c. When a legally established accessory structure is demolished and replaced with a new structure for the purposes of creating an ADU, the replacement structure may not exceed 18 feet in height.

3. Setbacks.

a. All ADUs remain subject to the setback standards in Section 3.6(F) and (G) except that no additional setback is required when a legally established accessory structure is demolished and is replaced with a new structure for the purposes of creating an ADU so long as the replacement structure is constructed within the same location and with the same dimensions as the structure it is replacing. and the ADU contained within that new structure does not exceed the maximum size limits in accordance with subsection G(1). However, in all cases scenic view corridor, shoreline and bluff setbacks, and ESHA setbacks still apply.

b. Pursuant to Section 13.27 of the Malibu LIP, the Director may grant minor modification permits to reduce setback requirements.

4. Passageway. No passageway, as defined in Section 2.1, is required for an ADU.

5. Parking.

a. One off-street parking space is required for each ADU. The parking space may be enclosed or unenclosed. Unenclosed parking spaces may be provided in setback areas or as tandem parking, as defined in Section 2.1, except where it is not feasible based on specific site topographic or fire and life safety conditions, and where it would violate an ESHA protection or scenic view corridor requirement.

b. Exceptions. No parking is required in the following situations, except as provided in 5(d):

i. The ADU is located within one-half mile walking distance of public transit, as defined in Section 2.1.

ii. The ADU is located within an architecturally and historically significant historic district.

iii. When on-street parking permits are required but not offered to the occupant of the ADU.

iv. When there is an established car share vehicle stop located within one block of the ADU.

c. No Parking Replacement Required. Except as required in Sections 3.10(G)(5)(d) and 3.10(I), when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU at an existing single-family dwelling, those off-street parking spaces are not required to be replaced. If replacement parking is proposed, the parking must be located on hardscape and mechanical automobile parking lifts, if used, must be located within an enclosed structure to ensure compliance with coastal resource protection for public views and water quality.

d. Parking, including replacement parking on a one-to-one basis, is required for ADUs built within 0.25 mile of a beach, public accessway, park, trailhead or other public visitor-serving area with high on-street parking demand east of Kanan Dume Road.

e. An ADU may include a garage not to exceed four hundred (400) square feet.

6. An attached ADU shall not be connected internally to the main residence. A detached ADU shall not be connected internally to any accessory structure except for a garage which serves the ADU.

H. ADUs - Multi-Family Lots and Buildings

1. Converted on Multi-Family Lot: Multiple ADUs within portions of existing multi-family dwelling structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, are allowed if each converted ADU complies with State building standards for dwellings. At least one converted ADU is allowed within an existing multi-family dwelling, and up to 25 percent of the existing multi-family dwelling units may each have a converted ADU under this paragraph.

2. Detached on Multi-Family Lot: No more than two detached ADUs are allowed on a lot that has an existing multi-family dwelling if each detached ADU satisfies the standards in Section G above.

3. Attached on Multi-Family Lot: Except as described in subsection 3.10(H)(1), ADUs attached to existing multi-family dwelling structures are not allowed.

I. Very High Fire Hazard Severity Zone.

1. Where a lot or any portion thereof is located within a Very High Fire Hazard Severity Zone and the lot does not have two distinct means of vehicular access (a street) such that the two distinct means of vehicular access, as measured from the lot to the point of intersection with a street, do not overlap with each other and each means of vehicular access is a minimum 24 feet wide and improved with paving or other all-weather surfacing, an accessory dwelling unit shall meet following requirements:

a. Fire sprinklers shall be provided in the accessory dwelling unit.

b. A 10-foot separation between the accessory dwelling unit and any other structure shall be maintained.

d. For a garage, carport, or covered parking structure that is converted to an accessory dwelling unit, onsite replacement parking spaces shall be required to comply with the minimum number of spaces and dimensions below:

Single-Family Dwelling – 10 feet wide and 18 feet long, two parking spaces

Multi-Family Dwelling - 10 feet wide and 18 feet long
i. Efficiency – two spaces
ii. One to two bedrooms – 3 spaces
iv Four each additional bedroom beyond two – one space

However, the replacement parking spaces need not be enclosed.

2. Notwithstanding Subsection I.1 above, accessory dwelling units shall be permitted on lots with a single means of vehicular access if such lots front a street with at least four total lanes of traffic and vehicles back directly onto that street.

CHAPTER 13—COASTAL DEVELOPMENT PERMITS

No changes to 13.1 through 13.3

13.4. EXEMPTIONS FROM AND DE MINIMIS WAIVERS OF COASTAL DEVELOPMENT PERMIT

The projects described in Sections 13.4.1 through 13.4.9 are exempt from the requirement to obtain a Coastal Development Permit and subject to the requirements of Section 13.4.10. Section 13.4.11 describes general requirements for de minimis waivers and projects eligible for de minimis waivers.

13.4.1 Exemption for Improvements to Existing Single-Family Residences

A. Improvements to existing single-family residences except as noted below in (B). For purposes of this section, the terms "Improvements to existing single-family residences" includes all fixtures and structures directly attached to the residence and those structures normally associated with a single-family residence, such as garages, swimming pools, fences, storage sheds and landscaping but specifically not including guest houses or ~~accessory self-contained residential units~~ accessory dwelling units.

B. The exemption in (A) above shall not apply to the following classes of development which require a coastal development permit because they involve a risk of adverse environmental impact:

1. Improvements to a single-family structure if the structure or improvement is located: on a beach, in a wetland, seaward of the mean high tide line, in an environmentally sensitive habitat area, or within 50 feet of the edge of a coastal bluff.

2. Any significant alteration of land forms including removal or placement of vegetation, on a beach, wetland, or sand dune, or within 50 feet of the edge of a coastal bluff, or in environmentally sensitive habitat areas.

3. The expansion or construction of water wells or septic systems.

4. On property not included in subsection (B)(1) above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resources areas as designated by the City or Coastal Commission, improvement that would result in an increase of 10 percent or more of internal floor area of an existing structure or an additional improvement of 10 percent or less where an improvement to the structure had previously been undertaken pursuant to this section or Public Resources Code section 30610(a), increase in height by more than 10 percent of an existing structure and/or any significant non-attached structure such as garages, fences, shoreline protective works or docks.

5. In areas which the City or Coastal Commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for the protection of coastal resources or public recreational use, the construction of any specified major water using development not essential to residential use including but not limited to swimming pools, or the construction or extension of any landscaping irrigation system.

6. Any improvement to a single-family residence where the development permit issued for the original structure by the Coastal Commission, regional Coastal Commission, or City indicated that any future improvements would require a development permit.

13.4.3 Exemption for Other Improvements

A. Improvements to any structure other than a single-family residence or a public works facility except as noted below in Section 13.4.3 (B) of the Malibu LIP. For purposes of this section, where there is an existing structure, other than a single-family residence or public works facility, the following shall be considered a part of that structure:

1. All fixtures and other structures directly attached to the structure.

2. Landscaping on the lot.

B. The exemption in 13.4.3 (A) above shall not apply to the following classes of development which require a coastal development permit because they involve a risk of adverse environmental effect, adversely affect public access, or involve a change in use contrary to the policies of the LCP.

1. Improvement to any structure if the structure or the improvement is located: on a beach; in a wetland, stream, or lake; seaward of the mean high tide line; or within 50 feet of the edge of a coastal bluff;

2. Any significant alteration of land forms including removal or placement of vegetation, on a beach or sand dune; in a wetland or stream; within 100 feet of the edge of a coastal bluff, or in an environmentally sensitive habitat area;

3. The expansion or construction of water wells or septic systems;

4. On property not included in subsection 13.4.3 (B)(1) of the Malibu LIP above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resource areas as designated by the LUP, an improvement that would result in an increase of 10 percent or more of internal floor area of the existing structure, or constitute an additional improvement of 10 percent or less where an improvement to the structure has previously been undertaken pursuant to section (A) above or Public Resources Code section 30610(b), and/or increase in height by more than 10 percent of an existing structure;

5. In areas which the City or the Coastal Commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for protection of coastal recreation or public recreational use, the construction of any specified major water using development including but not limited to swimming pools or the construction or extension of any landscaping irrigation system;

6. Any improvement to a structure where the coastal development permit issued for the original structure by the City or the Coastal Commission indicated that any future improvements would require a development permit;

7. Any improvement to a structure which changes the intensity of use of the structure;

8. Any improvement made pursuant to a conversion of an existing structure from a multiple unit rental use or visitor-serving commercial use to a use involving a fee ownership or long-term leasehold including but not limited to a condominium conversion, stock cooperative conversion or motel/hotel timesharing conversion.

13.11. PUBLIC HEARING REQUIRED AND PUBLIC COMMENT

A. At least one public hearing shall be required on all appealable development as defined in Chapter 2 of the Malibu LIP (Definitions), except for accessory dwelling units, in accordance with Section 3.10 unless the accessory dwelling unit is developed concurrent with a new single-family dwelling.

1. Such hearing shall occur no earlier than seven (7) calendar days following the mailing of the notice required in Section 13.12 of the Malibu LIP. The public hearing may be conducted in accordance with existing City procedures or in any other manner reasonably calculated to give interested persons an opportunity to appear and present their viewpoints, either orally or in writing.

2. If a decision on a development permit is continued by the City to a time which is neither (a) previously stated in the notice provided pursuant to Section 13.12 of the Malibu LIP, nor (b) announced at the hearing as being continued to a time certain, the local government shall provide notice of the further hearings (or action on the proposed development) in the same manner, and within the same time limits as established in Section 13565 of the California Code of Regulations.

B. Any person may submit written comments to the Planning Director ~~Manager~~ on an application for a Coastal Development Permit, or on an appeal of a Coastal Development Permit, at any time prior to the close of the public hearing. If no public hearing is required, written comments may be submitted prior to the decision date specified in the public notice. Written comments shall be submitted to the Planning Director ~~Manager~~ who shall forward them to the appropriate person, commission, board or the Council and to the applicant. (Ord. 303 § 3, 2007)

13.13. ADMINISTRATIVE PERMITS

13.13.1 Applicability

A. The Planning Director ~~Manager~~ may process consistent with the procedures in this Chapter any coastal development permit application for the specific uses identified below, except a proposed coastal development permit that is appealable or is within the Commission's continuing jurisdiction as defined in Chapter 2 of the Malibu LIP (Definitions).

1. Improvements to any existing structure;

2. Any single-family dwelling;

3. Lot mergers;

4. Any development of four dwelling units or less that does not require demolition, and any other developments not in excess of one hundred thousand dollars ($100,000) other than any division of land;

5. Water wells.

B. Notwithstanding any other provisions of the LCP, ~~attached or detached~~ accessory ~~second~~ dwelling units created in accordance with Section 3.10 shall be processed as administrative permits, The approval of such permits shall be appealable to the Coastal Commission if the project is located in the appealable zone. (Ord. 335 § 3, 2009; Ord. 303 § 3, 2007)

13.31 ACCESSORY DWELLING UNIT COASTAL DEVELOPMENT PERMITS

13.31.1 Applicability

These regulations shall apply to all applications for an Accessory Dwelling Unit (ADU) as defined in Chapter 2 of the Malibu LIP (Definitions). An application for an Accessory Dwelling Unit Coastal Development Permit (ADU CDP) shall be made to the Planning Director.

A. Applications for ADU CDPs shall be made to the Planning Director on forms provided by the Planning Department.

B. Public notice for ADU CDP shall be provided in the same manner as for an administrative coastal development permit.

13.31.2 Findings and Permit Issuance

A. The Planning Director may approve an application for an ADU CDP if all of the following findings can be made:

1. The proposed ADU is consistent with the LCP and all applicable LCP provisions, local laws and regulations regarding ADUs.

2. The dwelling conforms to the development standards and requirements for ADUs established in LIP Section 3.10.

3. Public and utility services including emergency access are adequate to serve both dwellings.

4. The proposed ADU CDP has been conditioned in accordance with the LCP.

B. Upon approving an ADU CDP, the Planning Director shall issue a written document that at a minimum includes the following information:

1. Location of the project;

2. The date of issuance;

3. An expiration date;

4. The scope of work to be performed;

5. Terms and conditions of the permit; and

6. Findings.

13.31.3 Reporting of ADU CDPs

1. The Planning Director shall report in writing to the Planning Commission at each meeting ADU CDP permits approved under this section in the same manner as for an administrative permit, consistent with LIP Section 13.13.6.

2. Appeals. Local appeals shall be processed consistent with LIP Section 13.20.1; notice of all local appeals shall be provided in the same manner as for an administrative permit. If the project is located in the appealable zone, Coastal Commission appeals shall be processed consistent with LIP Section 13.20.2.

NOTE: Changes are proposed for the Residential land use category only as noted below. No changes are proposed for the other land use categories.

Appendix 1 TABLE B PERMITTED USES

KEY TO TABLE (In addition to a coastal development permit, MCUP, CUP, LFDC, & WTF permits are required pursuant to the Malibu Municipal Code where shown in this table.)	
	Permitted use
MCUP	**Requires the approval of a minor Conditional Use Permit by the Director**
CUP	**Requires the approval of a Conditional Use Permit**
A	**Permitted only as an accessory use to an otherwise permitted use**
LFDC	**Requires the approval of a Large Family Day Care permit**
WTF	**Requires the approval of a Wireless Telecommunications Facility**
STR	**Use requires valid short-term rental permit approved by the City**
	Not permitted (Prohibited)

USE	RR	SF	MF	MFBF	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
RESIDENTIAL																
Single-family residential[1]	P	P	P	P	.	.	.	.	.	.	.	.	.	A	.	.
Manufactured homes	P	P	P	P	.	.	.	.	.	.	.	.	.	.	.	.
Multiple-family residential (including duplexes, condominiums, stock cooperatives, apartments, and similar developments)	.	.	CUP[19]	CUP[19]	.	.	.	.	.	.	.	.	.	.	.	.
~~Second~~ Accessory dwelling units	A[22]	A[22]	A[22]	A[22]	.	.	.	.	.	.	.	.	.	.	.	.
Mobile home parks	.	.	.	.	P	.	.	.	.	.	.	.	.	.	.	.
Mobile home park accessory uses (including recreation facilities, meeting rooms, management offices, storage/maintenance buildings, and other similar uses)	.	.	.	.	CUP	.	.	.	.	.	.	.	.	.	.	.
Mobile home as residence during construction	P	P	P	MCUP	.	.	.	.	.	.	.	.	.	.	.	.
Accessory uses (guest ~~units~~ house, garages, barns, pool houses, pools, spas, gazebos, storage sheds, greenhouses (non-commercial), sports courts (non-illuminated), corrals (non-commercial), and similar uses)	A[1]	A[1]	A[1]	A[1]	.	.	.	.	.	.	.	.	.	.	.	.
Residential care facilities (serving 6 or fewer persons)	P	P	P	.	.	.	.	.	.	.	.	.	.	.	.	.
Large residential care facilities (serving 7 or more person	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Small residential care facilities (serving 6 or fewer persons)	P	P	P	.	.	.	.	.	.	.	.	.	.	.	.	.
Single Room Occupancy Facility	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Small family day care (serving 6 or fewer persons)	A	A	A	.	.	.	.	.	.	.	.	.	.	.	.	.
Large family day care (serving 7 to 12 persons)	LFDC	LFDC	LFDC	.	.	.	.	.	.	.	.	.	.	.	.	.
Home occupations	P/ MCUP [2]	P/ MCUP[2]	P/ MCUP[2]	P/ MCUP[2]	.	.	.	.	.	.	.	.	.	.	.	.
Short-term rental	STR[21]	STR[21]	STR[21]	STR[21]	STR[21]											

(…)

Notes:

1. Subject to Residential Development Standards (Section 3.6).
2. Subject to Home Occupations Standards [(Section 3.6(O)].
3. Use Prohibited in Environmentally Sensitive Habitat Areas.
4. This commercial use may be permitted only if at least 50% of the total floor area of the project is devoted to visitor serving commercial use. This floor area requirement shall not apply to the Civic Center Wastewater Treatment Facility.
5. CUP for veterinary hospitals.
6. Maximum interior occupancy of 125 persons.
7. If exceeding interior occupancy of 125 persons.
8. By hand only.
9. Use permitted only if available to general public.
10. Charitable, philanthropic, or educational non-profit activities shall be limited to permanent uses that occur within an enclosed building.
11. Sports field lighting shall be limited to the main sports field at Malibu High School and subject to the standards of LIP Sections 4.6.2 and 6.5(G).
12. Limited to public agency use only (not for private use).
13. Accessory uses when part of an educational or non-profit (non-commercial) use. However, residential care facilities for the elderly are limited to operation by a non-profit only.
14. CUP for facilities within a side or rear yard when adjacent to a residentially-zoned parcel.
15. Conditionally permitted only when facilities are ancillary to the Civic Center Wastewater Treatment Facility, including, but not limited to, injection wells, generators, and pump stations.
16. This use is conditionally permitted in the Civic Center Wastewater Treatment Facility Institutional Overlay District and only when associated with the existing wastewater treatment facility or with the Civic Center Wastewater Treatment Facility.
17. Transitional and supportive housing is permitted in the same manner as one single family residence and is subject to all the restrictions that apply to single family residential uses.
18. Transitional and supportive housing is permitted in the same manner as a multi-family residential use and is subject to all the restrictions that apply to multi-family residential uses.
19. Multi-family development associated with an affordable housing development project is permitted by right.
20. Multi-family development is only permitted in the CC zone if it is associated with an affordable housing development project within the Affordable Housing Overlay (APNs 4458-022-023 and 4458-022-024 only), in compliance with Section 3.4.5.
21. Single-family residence properties are limited to hosted short-term rental permits only; one dwelling unit in a duplex may be rented unhosted if the owner or designated operator lives onsite in the other dwelling unit during the rental period; and for multifamily properties, a maximum of two dwelling units per parcel, or 40%, whichever is less, may be devoted to short-term rental use.
22. Subject to Accessory Development Standards (Section 3.10).

`Title 17

ZONING

Chapters:

Chapter 17.02

INTRODUCTORY PROVISIONS AND DEFINITIONS

Sections:

17.02.060 Definitions.

As used in this title:

"Accessory Dwelling Unit" means an attached or a 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. An accessory dwelling unit also includes the following:

1. An efficiency unit, as defined by Section 17958.1 of the California Health and Safety Code and the California Building Code; and

2. A manufactured home, as defined by Section 18007 of the California Health and Safety Code.

"Accessory Dwelling Unit, attached" means an accessory dwelling unit that is physically connected to the primary dwelling unit and share an interior wall or as an additional story above the primary dwelling unit, but which has independent, direct access from the exterior.

"Accessory Dwelling Unit, detached" means an accessory dwelling unit that is not an attached accessory dwelling unit.

"Car share vehicle" means a motor vehicle that is operated as part of a regional fleet by a public or private car-sharing company or organization and provides hourly or daily service. A car share vehicle does not include vehicles used as part of ride-hailing companies such as Uber or Lyft.

"Complete independent living facilities" means 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.

"Junior Accessory Dwelling Unit" means a residential unit that

1. is no more than 500 square feet in size;

2. is contained entirely within an existing or proposed single-family structure;

3. has a separate exterior entrance;

4. includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure; and

5. includes an efficiency kitchen.

"Kitchen, including an efficiency kitchen" means an area within a structure that is used or designed to be used for the preparation or cooking of food and that contains each of the following:

1. A cooking facility with appliances including, but not limited to: ovens, convection ovens, stoves, stove tops, built-in grills or similar appliances.

2. A food preparation counter or counters that total at least 15 square feet in area.

3. Food storage cabinets that total at least 30 square feet of shelf space

~~"Kitchen" means a room or space within a building intended to be used for the cooking and preparation of food.~~

"Living area" means the interior habitable area of a dwelling unit, including finished basements ~~and~~ or attics but does not include unfinished basements or attics, rooms with floor to ceiling heights less than 6 feet, ~~with a~~ garages or accessory structures.

"Multi-family residence" means a building or portion thereof used for occupancy by ~~three~~ two or more families living independently of each other and containing two ~~three~~ or more dwelling units. This does not apply to a primary residence and an ADU or guest house on the same parcel.

"Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit or junior accessory dwelling unit.

"Public transit" means a location, including, but not limited to, a bus stop, where the public may access buses and other forms of transportation that charges set fares, run on fixed routes, and available to the public.

~~"Second unit" means an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated.~~

"Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

"Very High Fire Hazard Severity Zone" means zone as defined by Government Code 51177 and designated by Ordinance 299.

"Wet Bar" means a single sink and refrigerator no greater than 5 cubic feet in size with cabinets and/or counter top area not exceeding 6 lineal feet. A wet bar shall not include a refrigerator in excess of 5 cubic feet in size or a kitchen sink greater than 2 square feet in size, or a gas or electric range, stove top and/or oven (but may include a microwave oven).

Chapter 17.08

RR RURAL RESIDENTIAL DISTRICT

Sections:

17.08.020 Permitted uses.

The following uses and structures are permitted in the RR district:

A. One single-family residence per lot;

B. Small family day care and residential care facilities serving six or fewer persons;

C. Accessory uses and structures as follows:

1. Accessory buildings customarily ancillary to single-family residences including, but not limited to, guest ~~units~~ houses ~~seven hundred fifty (750 square feet maximum~~ in accordance with Section 17.40.040(A)(21), detached garages, barns, pool houses, gazebos, storage sheds, and greenhouses (noncommercial),

2. Recreational structures including, but not limited to, pools, spas, nonilluminated sports courts, and corrals,

3. Domestic animals, kept as pets or for personal use,

4. Raising of crops including, but not limited to, field, trees, bush, berry row and nursery stock, provided there is no retail sale from the premises,

5. Raising of horses, sheep, goats, donkeys, mules and other equine cattle for personal use by residents on the premises, subject to the following conditions:

a. The subject property is a minimum of fifteen thousand (15,000) square feet in size,

b. The maximum number of animals listed above does not exceed one animal (over six months of age) for every five thousand (5,000) square feet of lot area,

c. The animals shall be maintained in an area a minimum of fifty (50) feet from any building used for human habitation;

D. The following agricultural uses; provided, that all buildings or structures used in conjunction therewith shall be located not less than fifty (50) feet from any street or highway or any building used for human habitation:

1. The raising of horses and other equine, cattle, sheep and goats, including the breeding and training of such animals, on a parcel having an area of not less than one acre and provided that not more than eight such animals per acre of the total ground area be kept or maintained in conjunction with such use,

2. The grazing of cattle, horses, sheep or goats on a parcel with an area of not less than five acres, including the supplemental feeding of such animals, provided:

a. That such grazing is not a part of nor conducted in conjunction with any dairy, livestock feed yard, livestock sales yard or commercial riding academy located on the same premises,

b. That no buildings, structures, pens or corrals designed or intended to be used for the housing or concentrated feeding of such stock be used on the premises for such grazing other than racks for supplementary feeding, troughs for watering, or incidental fencing,

3. Raising of poultry, fowl, birds, rabbits, fish, bees and other animals of comparable nature, provided the subject parcel is a minimum of one acre in size,

4. The raising of hogs or pigs, provided:

a. That the animals are located not less than one hundred fifty (150) feet from any highway and not less than fifty (50) feet from the side or rear lines of any parcel,

b. That the animals shall not be fed any market refuse or similar imported ingredient or anything other than table refuse from meals consumed on the same parcel of land, or grain,

c. That no more than two weaned hogs or pigs are kept,

d. That the subject parcel is a minimum of one acre in size;

E. Manufactured homes, pursuant to Government Code Section 65852.3;

F. ~~Second units, pursuant to Government Code Section 65852.2;~~ Accessory dwelling units in accordance with Chapter 17.44;

G. Large family day care facilities (serving seven to twelve (12) persons), subject to the provisions of Section 17.66.110;

H. Private equestrian and/or hiking trails;

I. Greenhouses on a lot or parcel of land having an area of at least one acre;

J. Temporary placement of mobilehomes and trailers subject to the conditions of Section 17.40.040(A)(18). (Ord. 104 § 2, 1993; Ord. 93 §§ 8, 9, 1993; Ord. 86 § 3, 1993; prior code § 9211)

Chapter 17.10

SF SINGLE FAMILY DENSITY RESIDENTIAL DISTRICT

Sections:

17.10.020 Permitted uses.

The following uses and structures are permitted in the SF district:

A. One single-family residence per lot;

B. Small family day care and residential care facilities serving six or fewer persons;

C. Accessory uses and structures as follows:

1. Accessory buildings customarily ancillary to single-family residences including, but not limited to, detached garages, barns, pool houses, gazebos, storage sheds, guest ~~units~~ houses ~~(seven hundred fifty (750) square feet maximum~~) in accordance with Section 17.40.040(A)(21), and greenhouses (noncommercial),

2. Recreational structures including, but not limited to, pools, spas, nonilluminated sports courts, and noncommercial corrals,

3. Domestic animals,

4. Raising of crops including, but not limited to, field, trees, bush, berry row and nursery stock, provided there is no retail sale from the premises,

5. Raising of horses, sheep, goats, donkeys, mules and other equine cattle for personal use by residents on the premises, subject to the following conditions:

a. The subject property is a minimum of fifteen thousand (15,000) square feet in size,

b. The maximum number of animals listed above does not exceed one animal (over six months of age) for every five thousand (5,000) square feet of lot area,

c. The animals shall be maintained in an area a minimum of fifty (50) feet from any building used for human habitation;

D. Manufactured homes, pursuant to Government Code Section 65852.3;

E. ~~Second units, pursuant to Government Code Section 65852.2;~~ Accessory dwelling units in accordance with Chapter 17.44;

F. Large family day care facilities (serving seven to twelve (12) persons), subject to Section 17.66.110;

G. Temporary placement of mobilehomes and trailers subject to the conditions of Section 17.40.040(A)(18). (Ord. 104 § 2, 1993; Ord. 86 § 3, 1993; prior code § 9221)

Chapter 17.12

MF MULTIPLE FAMILY RESIDENTIAL DISTRICT

Sections:

17.12.020 Permitted uses.

The following uses and structures are permitted in the MF district:

A One single-family residence per lot;

B. Small family day care and residential care facilities involving six or fewer persons;

C. Accessory uses and structures as follows:

1. Accessory buildings customarily ancillary to single-family residences including, but not limited to, detached garages, barns, pool houses, gazebos, storage sheds, guest ~~units~~ houses ~~(seven hundred fifty (750) square feet maximum)~~ in accordance with Section 17.40.040(A)(21), and greenhouses (noncommercial),

2. Recreational structures including, but not limited to, pools, spas, nonilluminated sports courts, and corrals,

3. Domestic animals;

D. Manufactured homes, pursuant to Government Code Section 65852.3;

E. ~~Second units, pursuant to Government Code Section 65852.2;~~ Accessory dwelling units in accordance with Chapter 17.44;

F. Large family day care facilities (serving seven to twelve (12) persons), subject to Section 17.66.110;

G. Temporary placement of mobilehomes and trailers subject to the conditions of Section 17.40.040(A)(18). (Ord. 104 § 2, 1993; Ord. 86 § 3, 1993; prior code § 9231)

Chapter 17.14

MFBF MULTIFAMILY BEACH FRONT DISTRICT

Sections:

17.14.020 Permitted uses.

The following uses and structures are permitted in the MFBF district:

A One single-family residence per lot;

B. Expansion up to five hundred (500) square feet of existing multifamily buildings provided the expansion conforms to the provisions of Chapter 17.40;

C. Accessory uses and structures as follows:

1. Accessory buildings customarily ancillary to single-family and multifamily residences including, but not limited to, detached garages, pool houses, gazebos, storage sheds, guest ~~units~~ houses ~~(seven hundred fifty (750) square feet maximum)~~ in accordance with Section 17.40.040(A)(21),

2. Recreational structures including, but not limited to, pools, spas, nonilluminated sports courts,

3. Domestic animals;

D. Manufactured homes, pursuant to Government Code Section 65852.3;

E. ~~Second units, pursuant to Government Code Section 65852.2. (Ord. 151 § 11, 1996; prior code § 92362)~~ Accessory dwelling units in accordance with Chapter 17.44.

Chapter 17.39

MALIBU COAST ESTATE PLANNED DEVELOPMENT (PD) DISTRICT

Sections:

17.39.020 Permitted uses.

Lot numbers are as identified on Malibu Coast Estate Planned Development Map 1. The following uses and structures are permitted:

A. Lot Nos. 1—5.

1. One single-family residence per lot.

2. Accessory uses (~~one second unit or~~ guest house ~~per lot~~ in accordance with Section 17.40.040(A)(21), garages, swimming pools, spas, pool houses, cabanas, water features, gazebos, storage sheds, private non-illuminated sports courts, noncommercial greenhouses, gated driveways, workshops, gyms, home studios, home offices, and reasonably similar uses normally associated with a single-family residence, as determined by the planning director).

3. Accessory dwelling units in accordance with Chapter 17.44.

4. Domestic animals, kept as pets.

5. Landscaping.

B. Lot No. 6. Uses and structures maintained by either the owners of Lots 1—5 or the homeowners' association formed to serve the residential development within Malibu Coast Estate, including a guard house, private access road, gates (including entry gates), fencing, visitor parking, landscaping, guardhouse parking, community utilities, informational and directional signage, private open space, lighting and wastewater treatment facilities serving uses within Malibu Coast Estate.

C. Lot No. 7.

1. Parks and public open space, excluding community centers.

2. Active and passive public recreational facilities, such as ball fields, skate parks, picnic areas, playgrounds, walkways, restrooms, scoreboard, sport court fencing, parking lots, and reasonably similar uses as determined by the planning director. Night lighting of recreational facilities shall be prohibited, except for the minimum lighting necessary for public safety.

3. Onsite wastewater treatment facilities. (Ord. 398 § 6, 2015)

17.39.040 Property development and design standards.

The following development standards shall replace the corresponding development standards (Sections 17.40.040 and 17.40.080) for Malibu Coast Estate. All requirements of the zoning ordinance, including, but not limited to, Section 17.40.030 that are consistent with the criteria listed below shall remain in effect for those parcels in Malibu Coast Estate.

A. Lot Nos. 1—5.

1. Development Footprint and Structure Size (Replaces corresponding standards in LIP Section 3.6(K)).

a. The total development square footage (TDSF) on each of Lot Nos. 1—5 shall not exceed the following square footage per lot:

Lot 1 —10,052 square feet.
Lot 2 —9,642 square feet.
Lot 3 —9,434 square feet.
Lot 4 —9,513 square feet.
Lot 5 —10,990 square feet.

b. Combinations of Basements, Cellars and/or Subterranean Garages. If any combination of basements, cellars, and/or subterranean garages is proposed, the initial one thousand (1,000) square feet of the combined area shall not count toward TDSF. Any additional area in excess of one thousand (1,000) square feet shall be included in the calculation of TDSF at ratio of one square foot for every two square feet proposed.

c. Covered areas, such as covered patios, eaves, and awnings that project up to six feet from the exterior wall of the structure shall not count toward TDSF; if the covered areas project more than six feet, the entire covered area (including the area within the six-foot projection) shall be included in TDSF.

d. The development footprint on each lot (Lot Nos. 1—5) shall substantially conform to that indicated on Malibu Coast Estate Planned Development Map 1. Structures on Lot 5 shall be set back a minimum of one hundred ninety (190) feet from the edge of the bluff as identified on Malibu Coast Estate Planned Development Map 1 in order to ensure that impacts to public views of the eastern Malibu coastline as seen from Malibu Bluffs Park are minimized. The structural setback on Lot 5 does not apply to at-grade improvements or low profile above-grade improvements for accessory uses not to exceed ten (10) feet in height.

2. Setbacks (Replaces corresponding standards in Section 17.40.040).

a. Front yard setbacks shall be at least twenty (20) percent of the total depth of the lot measured from the property line abutting the street, or sixty-five (65) feet, whichever is less. However, the front yard setback for Lot 5 shall be at least forty-three (43) feet.

b. Side yard setbacks shall be cumulatively at least twenty-five (25) percent of the total width of the lot but, in no event, shall a single side yard setback be less than ten (10) percent of the width of the lot.

c. Rear yard setbacks shall be at least fifteen (15) percent of the lot depth.

d. Parkland setbacks in LIP Section 3.6(F)(6) shall not apply.

3. Structure Height (Replaces corresponding standards in Section 17.40.040).

a. Every residence and every other building or structure associated with a residential development (excluding chimneys), including satellite dish antenna, solar panels and rooftop equipment, shall not be higher than eighteen (18) feet, except the easternmost approximately two thousand five hundred (2,500) square feet of the residence on Lot 2 and the southwestern corner of the residence on Lot 5 shall not be higher than fifteen (15) feet, as indicated on Malibu Coast Estate Planned Development Map 1 of the LIP. Height is measured from natural or finished grade, whichever is lower.

b. Mechanical equipment, including screens may not exceed roof height. Roof-mounted mechanical equipment shall be integrated into the roof design and screened.

c. In no event shall the maximum number of stories above grade be greater than two. Basements and subterranean garages shall not be considered a story.

4. Grading (Replaces corresponding standards in Section 17.40.040).

a. Notwithstanding other provisions of this code, all grading associated with the berm, ingress, egress, including safety access, shall be considered exempt grading.

b. Non-exempt grading shall be limited to two thousand (2,000) cubic yards per lot.

c. Net export shall be limited to three thousand five hundred (3,500) cubic yards per lot.

5. Impermeable Coverage, Landscaping, and Berm.

a. The impermeable coverage requirement in Section 17.40.040 shall apply.

b. In addition to the requirements of Section 17.40.040, site landscaping shall be designed to minimize views of the approved structures as seen from public viewing areas, including the use of native trees to screen approved structures. Landscaping and trees shall be selected, sited, and maintained to not exceed twenty-five (25) feet.

c. A natural-looking earthen berm that is four feet in height (except for the northernmost thirty (30) foot long portion on Lot 1 that shall be no less than two feet in height) above finished grade shall be constructed along the east side of all approved structures on Lots 1 and 2 to minimize views of the development from downcoast public viewing locations. The location and height of the berm shall substantially conform to that indicated on the Malibu Coast Estate Planned Development Map 1 of the LIP. The berm shall be vegetated with lower-lying native species that blend with the natural bluff landscape.

6. Parking (In addition to the parking standards of Section 17.40.040.

a. Two enclosed and two unenclosed parking spaces. The minimum size for a residential parking space shall be eighteen (18) feet long by ten (10) feet wide.

b. For a guest house see Section 17.40.040(A)(21). ~~One enclosed or unenclosed parking space for a guest unit or second unit.~~

c. For an accessory dwelling unit see Chapter 17.44.

7. Colors and Lighting (In addition to the standards of LIP Section 6.5(B)).

a. Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check and must be approved by the planning director prior to issuance of a building permit. All windows shall be comprised of non-glare glass.

b. Lighting must comply with LIP Section 6.5(G).

8. Permit Required. To ensure the protection of scenic and visual resources in accordance with the provisions of the LCP, any future improvements to structures or significant changes to landscaping beyond that authorized by the coastal development permit (CDP) for each residential lot (Lots 1—5), which would ordinarily be exempt from a CDP pursuant to LIP Section 13.4.1, shall be subject to a new CDP or permit amendment.

B. Lot No. 6.

1. Structure Size. The total development square footage of all structures shall not exceed one hundred eighty (180) square feet. The development footprint (gate and guardhouse) shall substantially conform to that indicated on Malibu Coast Estate Planned Development Map 1.

2. Setbacks.

a. Buildings, not including projections permitted in Section 17.40.050, shall maintain a minimum setback of fifty (50) feet from all property lines.

b. Parkland setbacks in LIP Section 3.6(F)(6) shall not apply.

3. Structure Height.

a. Structure height shall not exceed twelve (12) feet, as measured from natural or finished grade, whichever is lower.

b. In no event shall the maximum number of stories above grade be greater than one.

c. A basement, cellar or subterranean garage shall not be permitted.

4. Grading (Replaces corresponding standards in Section 17.40.040).

a. Notwithstanding other provisions of this code, all grading associated with ingress, egress, including safety access, shall be considered exempt grading.

b. Non-exempt grading shall be limited to one thousand (1,000) cubic yards.

c. Net export shall be limited to two thousand five hundred (2,500) cubic yards.

5. Impermeable Coverage (Replaces corresponding standard in Section 17.40.040). The impermeable coverage requirement in Section 17.40.040 shall not apply. Up to forty-four thousand (44,000) square feet of impermeable coverage shall be permitted.

6. Parking (In addition to the parking standards of Section 17.40.040). The guardhouse shall not have more than two parking spaces to be used for on duty guards and one additional parking space for service parking. Parking within the property boundaries shall not be located on or obstruct fire department access.

7. Colors and Lighting.

a. Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check and must be approved by the planning director prior to issuance of a building permit.

b. Lighting must comply with LIP Section 6.5(G).

C. Lot No. 7.

1. Site Design. Grading, setbacks, and facility siting shall be designed to meet the operational programs of the park as defined in the City of Malibu Parks Master Plan. Notwithstanding any other provision of this chapter, grading in all new parks shall be limited to not more than one thousand (1,000) cubic yards per acre, except that grading required for sports fields and skate parks designed to accommodate commonly accepted facility dimensions shall be exempt from these limitations. The facility shall be designed to minimize noise, lighting impacts and disruption to nearby residents.

2. Parking (In addition to the parking standards of Section 17.47.030). Adequate parking shall be provided to serve the proposed recreational uses. Parking shall be determined by a parking study prepared by a registered traffic engineer and based upon the proposed recreational uses. The planning director shall have the authority to determine the appropriateness of studies or other information used in determining the parking to be required. Where appropriate, off-site parking may be provided and may be counted towards satisfying the on-site parking requirement as long as sufficient parking is provided to serve existing and proposed public access and recreation uses and any adverse impacts to public access and recreation are avoided.

3. Fencing. With the exception of skate park and sport court fencing and backstops, fences and walls shall not exceed eight feet in height. The fencing and backstops design and materials shall take into consideration view and vista areas, site distance, and environmental constraints.

4. Temporary Uses. Temporary uses shall be in accordance with LIP Section 13.4.9 and the temporary use permit process contained within Chapter 17.68. (Ord. 398 § 6, 2015)

Chapter 17.40

PROPERTY DEVELOPMENT AND DESIGN STANDARDS

Section 17.40.040(A)

21. Guest Houses

a. Development of a guest house shall require that a primary dwelling unit be developed on the lot prior to or concurrent with the guest house.

b. Only one guest house is allowed per lot. Guest houses are not allowed on properties with an attached or detached accessory dwelling unit.

c. Development Standards

1. Siting. Any permitted guest house shall be located within the approved development area for the project site and shall be clustered with the primary dwelling unit and any other approved structures to minimize required fuel modification. All guest houses must comply with residential development standards in Section 17.40.040.

2. Maximum Size. The maximum square footage of a guest house shall not exceed 900 square feet. The maximum square footage shall include interior and exterior walls, basements, mezzanines, storage space, and any space with a height clearance (floor to ceiling height dimension) above six feet. The area of a garage provided as part of the guest house, exterior decks, covered patios, or overhangs that are attached to the structure shall not be included in the 900 square foot limit. The maximum square footage of a guest house, garage, and any other attached structures that are otherwise considered total development square footage shall be included in the overall total development square footage for the lot.

3. A 10-foot separation between the guest house and any other structure shall be maintained if the parcel is within a Very High Fire Hazard Severity Zone.

d. Parking

1. A minimum of one onsite enclosed or unenclosed parking space shall be provided for the exclusive use of a guest house.

2. One garage, attached and solely used for the guest house not to exceed 400 square feet in size may be permitted as part of a guest house.

Chapter 17.44

ACCESSORY DWELLING UNITS

17.44.010 Title.

This chapter shall be known as the "Malibu Accessory Dwelling Unit Ordinance."

17.44.020 Purpose.

The purpose of this chapter is to allow and regulate accessory dwelling units (ADUs) and Junior accessory dwelling units (JADUs) in compliance with California Government Code Sections 65852.2 and 65852.22. The entire the City of Malibu is located in a designated "Very High Fire Hazard Severity Zone", and this chapter ensures that ADUs and JADUs are developed and operated on adequate sites, at proper and desirable locations, and that the goals and objectives of the General Plan and LCP are observed.

17.44.030 Effect of Conforming.

An ADU or JADU that conforms to the standards in this chapter will be:

A. Deemed to be consistent with the City's General Plan and zoning designation for the lot on which the ADU or JADU is located.

B. Deemed not to exceed the allowable density for the lot on which the ADU or JADU is located.

C. Considered not to be subject to the application of any local ordinance, policy, or program to limit residential growth.

D. Permitted to maintain a nonconforming zoning condition. This does not prevent the City from enforcing compliance with applicable building standards in accordance with Health and Safety Code Section 17980.1. For purposes of this chapter, "nonconforming zoning condition" means a legally established physical improvement on a property that does not conform with current zoning standards.

17.44.040 Definitions.

Definition of terms used in this Chapter can be found at Section 17.02.060 Definitions.

17.44.050 Permitted Zones.

ADUS and JADUs shall be allowed on lots zoned to allow single-family or multi-family dwelling residential use. These zones include Rural Residential (RR), Single Family (SF), Multi-Family (MF), Multi-Family Beach Front (MFBF), and Planned Development (PD).

17.44.060 Approvals.

The following approvals apply to ADUs and JADUs developed under this Chapter. Because the City of Malibu lies entirely within the Coastal Zone, every ADU application in the City will be subject to an analysis for compliance with the Local Coastal Program (LCP) and Coastal Act before it is reviewed for compliance with this Chapter. If an application for an ADU is not subject to the LCP, then this Chapter will take precedence. State law is explicit about the Coastal Act not being preempted by the State's ADU statute (Government Code Section 65852.2, subdivision.(j).)

A. Building-Permit Only. After LCP review, an ADU or JADU that complies with each of the general requirements in Section 17.44.080 is allowed with only a building permit in the following scenarios:

1. Converted on Single-Family Lot: Only one ADU or JADU on a lot with a proposed or existing single-family dwelling on it, where the ADU or JADU:

   a. Is either: within the space of a proposed single-family dwelling; entirely within the existing space of an existing single-family dwelling; or entirely within the existing space of an existing accessory structure, plus up to 150 additional square feet if the expansion is limited to accommodating ingress and egress. The square footage used for ingress and egress is not exempt from other non-setback development standards for the applicable unit.

   b. Has exterior access that is independent of that for the single-family dwelling.

   c. Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes.

   d. Except for subsections a-c above, all other development standards will apply.

2. Limited Detached on Single-Family Lot: One detached, new-construction ADU on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established on the lot under subsection (A)(1) above, if the detached ADU satisfies the following limitations:

   a. The side and rear yard setbacks are at least four feet.

   b. The square footage is 800 square feet or smaller.

   c. The peak height above grade is 16 feet or less, as measured from existing or finished grade whichever results in a lower building height.

3. Converted on Multi-Family Lot: Multiple ADUs within portions of existing multi-family dwelling structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each converted ADU complies with state building standards for dwellings. At least one converted ADU is allowed within an existing multi-family dwelling, and

up to 25 percent of the existing multi-family dwelling units may each have a converted ADU under this paragraph.

4. Limited Detached on Multi-Family Lot: No more than two detached ADUs on a lot that has an existing multi-family dwelling if each detached ADU satisfies the following limitations:

a. The side and rear yard setbacks are at least four feet.

b. The square footage is 800 square feet or smaller for each ADU.

c. The peak height above grade is 16 feet or less. as measured from existing or finished grade whichever results in a lower building height.

B. ADU Administrative Plan Review Permit (ADU APR)

1. Except as allowed under subsection 17.44.060(A), no ADU may be created without a building permit and an ADU APR permit in compliance with the standards set forth in Sections 17.44.080 and 17.44.090.

2. The City may charge a fee to reimburse it for costs incurred in processing ADU APR permits, including the costs of adopting or amending the City's ADU ordinance. The ADU APR permit processing fee is determined by the City Council by resolution.

C. Very High Fire Hazard Severity Zone.

1. Where a lot or any portion thereof is located within a Very High Fire Hazard Severity Zone and the lot does not have two distinct means of vehicular access (a street) such that the two distinct means of vehicular access, as measured from the lot to the point of intersection with a street, shall not overlap with each other, and each means of vehicular access is a minimum 24 feet wide and improved with paving or other all-weather surfacing, an accessory dwelling unit shall meet following requirements:

a. Fire sprinklers shall be provided in the accessory dwelling unit.

b. A 10-foot separation between the accessory dwelling unit and any other structure shall be maintained.

c. Detached accessory dwelling units shall provide a minimum setback of 5 feet from the side and rear lot lines.

d. For a garage, carport, or covered parking structure that is converted to an accessory dwelling unit, onsite replacement parking spaces shall be required that comply with the minimum number of spaces and dimensions stated in Chapter 17.48. However, the replacement parking spaces need not be enclosed.

2. Notwithstanding Subsection (C)(1) above, accessory dwelling units shall be permitted on lots with a single means of vehicular access if such lots front a street with at least four total lanes of traffic and vehicles back directly onto that street.

D. ADUs - Multifamily Lots

ADUs are allowed on multifamily lots pursuant to 17.44.060 A. 3 and 4. New attached ADUs are not allowed.

17.44.070 Process and Timing.

A. An ADU APR is considered and approved ministerially by the Planning Director without discretionary review or a hearing, unless a variance request is included with the ADU APR. The City must act on an application to create an ADU or JADU within 60 days from the date that the City receives a complete application, unless either:

1. The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or

2. In the case of a JADU where the application to create a JADU is submitted with a permit application to create a new single-family dwelling on the lot, the City may delay acting on the permit application for the JADU until the City acts on the permit application to create the new single-family dwelling, but the application to create the JADU will still be considered ministerially without discretionary review or a hearing.

17.44.080 General ADU and JADU Requirements.

The following requirements apply to all ADUs and JADUs that are approved under Section 17.44.060.

A. Rental Term. An ADU or JADU may not be rented for a term that is shorter than 30 days.

B. Rental Rate Reporting. To facilitate the City's obligation to identify adequate sites in accordance with Government Code Sections 65583.1 and 65852.2, and to allow ADUs to count towards the City's Regional Housing Needs Assessment (RHNA) requirements, within 90 days after each yearly anniversary of the issuance of the building permit, the owner will be asked to report the actual rent charged for the ADU or JADU during the prior year.

C. No Separate Conveyance. An ADU or JADU may be rented, but no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all of the dwellings (in the case of a multi-family lot).

D. Septic System. If the ADU or JADU will connect to an onsite water treatment system, the owner must include with the application a percolation test completed within the last five

years or, if the percolation test has been recertified, within the last 10 years. The ADU shall comply with all applicable requirements for wastewater treatment systems.

E. Owner Occupancy. All JADUs are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement of this paragraph does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.

F. Deed Restriction. Prior to issuance of a building permit for an ADU or JADU, a deed restriction must be recorded against the title of the property in the County Recorder's office and a copy filed with the Director. The deed restriction must run with the land and bind all future owners. The form of the deed restriction will be provided by the City and must provide that:

1. The ADU or JADU may not be sold separately from the primary dwelling.

2. The ADU or JADU must remain an ADU unless City approval is obtained to convert the structure to a different accessory structure.

3. An ADU or JADU created cannot be rented for less than 30 days.

4. The ADU or JADU is restricted to the approved size unless City approval obtained to increase size.

5. The JADU must be reconverted to be part of the primary residence if the owner does not reside on the property.

6. The deed restriction runs with the land and may be enforced against future property owners.

7. The deed restriction may be removed if the owner eliminates the ADU or JADU, as evidenced by, for example, removal of the kitchen facilities. To remove the deed restriction, an owner may make a written request of the Director, providing evidence that the ADU or JADU has in fact been eliminated. The Director may then determine whether the evidence supports the claim that the ADU or JADU has been eliminated. Appeal may be taken from the Director's determination consistent with other provisions of this Code. If the ADU or JADU is not entirely physically removed but is only eliminated by virtue of having a necessary component of an ADU or JADU removed, the remaining structure and improvements must otherwise comply with applicable provisions of this Code.

8. The deed restriction is enforceable by the Director or his or her designee for the benefit of the City. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the City is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an

injunction enjoining the use of the ADU or JADU in violation of the recorded restrictions or abatement of the illegal unit.

17.44.090 Specific ADU Requirements.

The following requirements apply only to ADUs that require an ADU APR permit under Section 17.44.060(B) above.

A. Maximum Size

1. The maximum square footage of an ADU shall be 900 square feet for a studio or one bedroom and 1,200 square feet for two or more bedrooms. The maximum square footage shall include interior and exterior walls, basements, mezzanines, storage space, and any space with a height clearance (floor to ceiling height dimension) above six feet. The area of a garage (400 square feet maximum) provided as part of accessory dwelling unit and exterior decks or overhangs that are attached to the structure shall not be included in the 900 or 1,200 square foot limit. The maximum square footage of the ADU, garage, and other attached structures that are otherwise considered total development square footage shall be included in the overall total development square footage for the lot.

2. An ADU that is attached to the primary dwelling is limited to 50 percent of the living area of the existing primary dwelling.

3. Application of other development standards in this Section 17.44.090 might further the limit the size of the ADU, but no application of lot coverage or open space requirements may require the ADU to be less than 800 square feet.

4. The maximum living area, as defined in Section 17.02.060, of a JADU is 500 square feet.

6. An ADU shall not be exempt from Total Development Square Footage, Impermeable Coverage, Development Area and other applicable development standards in Section 17.40.40.

B. Height.

1. No ADU subject to this Section 17.44.090 may exceed 18 feet in height above grade, as measured from existing or finished grade, whichever results in the lower building height.

2. When a legally established accessory structure is demolished and is replaced with a new structure for the purposes of creating an ADU, the replacement structure may not exceed the height of the existing structure.

3. Any additional height above the existing height, is subject to all applicable development standards in Section 17.40.40.

C. Setbacks.

1. An ADU shall not be permitted within the front yard setback, however, when converting floor area within an existing single-residential dwelling or a legally established accessory structure located within the front yard setback, an ADU may expand the footprint of said structure up to 150 square feet to only accommodate ingress and egress as set forth in 17.44.060(A)(1)(a) above.

2. No part of any ADU subject to this Section 17.44.090 may be located within four feet of a side or rear property line.

3. No additional setback is required when a legally established accessory structure is demolished and is replaced with a new structure for the purposes of creating an ADU so long as the replacement structure is constructed within the same location and with the same dimensions as the structure it is replacing and the ADU contained within that new structure does not exceed the maximum size limits in accordance with subsection A(1). Additions to these structures are required to meet all current development standards. Legally established must be verified with building permits.

D. Passageway. No passageway, as defined by Section 17.02.060, is required for an ADU.

E. Parking.

1. Generally. One off-street enclosed or unenclosed parking space is required for each ADU. Unenclosed parking spaces may be provided in setback areas or as tandem parking, as defined by Section 17.02.060.

2. Exceptions. No parking under subsection (E)(1) above is required in the following situations:

   a. The ADU is located within one-half mile walking distance of public transit, as defined in Section 17.02.060.

   b. The ADU is located within an architecturally and historically significant historic district.

   c. The ADU is entirely within the proposed or existing primary residence or an existing accessory structure, under Section 17.44.060(A)(1).

   d. When on-street parking permits are required but not offered to the occupant of the ADU.

   e. When there is an established car share vehicle stop located within one block of the ADU.

3. No Replacement of Parking Required. Except as required in Section 17.44.060(C), when a garage, carport, or covered parking structure is demolished to allow the construction of an ADU or converted to an ADU in an existing single-family dwelling, those off-street

parking spaces are not required to be replaced. If replacement parking is proposed, the parking must be located on hardscape and mechanical automobile parking lifts must be located within an enclosed structure to ensure compliance with coastal resource protection for public views and water quality.

F. Internal connection. An attached ADU shall not be connected internally to the main residence. A detached ADU shall not be connected internally to any accessory structure except for a garage which serves the ADU.

17.44.100 Fees.

A. Impact Fees.

1. No impact fee shall be charged for an ADU that is less than 750 square feet in size.

2. Any impact fee that is required for an ADU that is 750 square feet or larger in size must be charged proportionately in relation to the square footage of the primary dwelling unit. (E.g., the square footage of the primary dwelling, divided by the square footage of the ADU, times the typical fee amount charged for a new dwelling.) "Impact fee" here does not include any connection fee or capacity charge for water or sewer service.

B. Utility Fees.

1. ADUs constructed with a single-family dwelling shall be subject to standard utility-connection requirements and fees.

2. Converted ADUs and JADUs or ADUs in an existing accessory structure on a single-family lot, created under 17.44.060(A)(1) are not required to have a new or separate utility connection directly between the ADU or JADU and the utility. Nor is a connection fee or capacity charge required unless the ADU or JADU is constructed with a new single-family home.

3. All ADUs and JADUs not covered by 17.44.100 (B)(1) above require a new, separate utility connection directly between the ADU or JADU and the utility. The connection is subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU or JADU, based on either the square footage or the number of drainage-fixture units (DFU) values, as defined by the Uniform Plumbing Code, upon the water or sewer system. The fee or charge may not exceed the reasonable cost of providing this service.

Chapter 17.45

CITYWIDE VIEW PRESERVATION AND RESTORATION*

Sections:

17.45.030 Definitions.

The following definitions shall apply for purposes of this chapter:

A. "Arbitration" means a voluntary legal procedure for settling disputes and leading to a determination of rights of parties, usually consisting of a hearing before an arbitrator where all relevant evidence may be freely admitted.

B. "Arbitrator" means a mutually agreed upon neutral third party professional intermediary who conducts a hearing process, and who hears testimony, considers evidence and makes decisions for the disputing parties.

C. "Certified arborist" means an individual certified as an arborist by the International Society of Arboriculture (ISA).

D. "Claimant" means a property owner who alleges that foliage is causing a significant obstruction of a primary view.

E. "Environmentally sensitive habitat areas or (ESHA)" as defined as set forth in the certified Malibu LCP Local Implementation Plan.

F. "Foliage" means a woody plant with the potential to obstruct primary views. "Foliage" includes without limitation trees, shrubs, hedges and bushes.

G. "Foliage owner" means a person owning property containing foliage that a claimant alleges is causing a significant obstruction of a protected view.

H. "Hedge" means any plant material, trees, stump growth, or shrubbery planted or grown in a dense continuous line, so as to form a thicket,
barrier or the substantial equivalent of a living fence.

I. "Main viewing area" means the ground floor of a commercial, institutional or principal residential structure unless the ground floor of a commercial structure consists of garages, parking areas and storage and unless the primary living area of a principal residential structure is not located on the ground floor. If the ground floor of a commercial structure consists of garages, parking areas and storage, the "main viewing area" means the first habitable floor. If the primary living area of a principal residence is not located on the ground floor, the main viewing area means the primary living area of the principal residence. The "main viewing area" may be an abutting outdoor deck or patio area located at relatively the same elevation as the ground floor of a commercial or institutional structure or a primary living area of a residence, whichever has the superior view corridor. Bedrooms, master bedroom retreats, offices, hallways, closets, laundry rooms, mechanical rooms, bathrooms and garages shall not be considered main viewing areas. Application of a primary view corridor requires an established "main viewing area."

J. "Mediation" means a process of using a neutral third person to facilitate a mutually satisfactory solution to a view dispute.

K. "Mediator" means a neutral third person that assists the claimant and foliage owner in finding a mutually satisfactory solution to a view dispute.

L. "Pre-existing view" means a primary view within the structure's assessed primary view corridor that existed on the date of acquisition of the property or city incorporation, whichever

is more recent. If the property was acquired without a developed, legally-habitable structure, a pre-existing view shall mean a primary view that existed as of issuance of a certificate of occupancy or city incorporation, whichever is more recent. The pre-existing view cannot be a result of a natural disaster or a result of illegal activities.

M. "Primary living area" means the living room, family room, dining room, kitchen or a combination thereof.

N. "Primary view" means visually impressive scenes of the Pacific Ocean, offshore islands, the Santa Monica Mountains, canyons, valleys, or ravines, within a primary view corridor.

O. "Primary view corridor" means a one hundred eighty (180) degree view assessed by the planning director or designee from a single fixed location and direction within the main viewing area, at an elevation of five feet as measured from the room floor or on an abutting outdoor deck or patio at any one point within ten (10) feet of the nearest outside wall of the structure as selected by the affected property owner and the city.

P. "Primary view determination" means a process by which the planning director or designee documents the location of a claimant's primary view corridor.

Q. "Principal residence" and "principal residential structure" mean the primary residential structure located on a lot. Guest houses~~, granny flats and second units~~ accessory dwelling units and junior accessory dwelling units are not principal residences or principal residential structures.

R. "Protected tree" as defined in Section 5.2 of the Malibu Local Coastal Program Local Implementation Plan.

S. "Removal" means the destruction or displacement of foliage by cutting or other mechanical method that result in physical transportation of the foliage from its site and/or death of the foliage.

T. "Restorative action" means measures undertaken to eliminate a significant obstruction of a primary view.

U. "Stump growth" means new growth from the remaining portion of a tree trunk, the main portion of which has been cut off.

V. "View preservation permit" means a permit issued by the city, requiring restorative actions on foliage located on a foliage owner's property in order to preserve a claimant's primary view. (Ord. 378 § 3, 2014)

Appendix 1 PERMITTED USES TABLE*

In the event of a conflict between the table and the text of Title 17, the text shall control.

KEY TO TABLE (In addition to a coastal development permit, MCUP, CUP, LFDC, & WTF permits are required pursuant to the Malibu Municipal Code where shown in this table.)	
P	Permitted use
MCUP	Requires the approval of a minor Conditional Use Permit by the Director
CUP	Requires the approval of a Conditional Use Permit
A	Permitted only as an accessory use to an otherwise permitted use
LFDC	Requires the approval of a Large Family Day Care permit
WTF	Requires the approval of a Wireless Telecommunications Facility
STR	Use requires valid short-term rental permit approved by the City
•	Not permitted (Prohibited)

USE	RR	SF	MF	MFBF	MH	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
Agricultural employee housing, as an accessory use, animal related	A	•	•	•	•	CUP	•	•	•	•	•	•	•	•	•	•
Agricultural employee housing, as an accessory use, crop related	A	A	CUP	•	•	•	•	•	•	•	•	•	•	•	•	•
One single-family residence per lot[28]	P	P	P	P	•	•	•	•	•	•	•	•	•	•	•	•
Manufactured homes pursuant to Government Code § 65852.3	P	P	P	P	•	•	•	•	•	•	•	•	•	•	•	•
Multifamily residential (including duplexes, condominiums, stock cooperatives, apartments, and similar development[29]	•	•	CUP[30]	CUP[2,30]	•	•	•	•	P[31]	•	•	•	•	•	•	•
~~Second~~ Accessory dwelling units ~~pursuant to Government Code § 65852.2.~~	A[33]	A[33]	A[33]	A[33]	•	•	•	•	•	•	•	•	•	•	•	•

USE	RR	SF	MF	MFBF	MH	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
Mobile home parks in existence as of March 28, 1991	•	•	•	•	P	•	•	•	•	•	•	•	•	•	•	•
Mobile home park accessory uses (including recreation facilities, meeting rooms, management offices, storage/maintenance buildings, and other similar uses)	•	•	•	•	CUP	•	•	•	•	•	•	•	•	•	•	•
Mobile home park modifications to number, layout, or density and public or common areas, except for repair and maintenance	•	•	•	•	CUP	•	•	•	•	•	•	•	•	•	•	•
Temporary mobile home as residence subject to§17.40.040(A)(18)	P	P	P	MCUP	•	•	•	•	•	•	•	•	•	•	•	•
Accessory uses (guest ~~unit~~ house (~~750~~ 900 sf max), garages, barns, pool houses, pools, spas, gazebos, storage sheds, greenhouses (non-commercial), sports courts (non-illuminated), corrals (non-commercial), and similar uses)	A	A	A	A[3]	•	•	•	•	•	•	•	•	•	•	•	•

(…)

Notes:

1. One single-family residence in conjunction with an institutional use and consistent with the provisions of Chapter 17.08.
2. Includes the expansion of over 500 sq. ft. of existing multiple family structures.
3. Barns and corrals not allowed.
4. Subject to Home Occupation Standards Section 17.40.040(A)(19).
5. Public and private hiking trails in CR and I zones and private hiking trails in RR, SF, and MF zones.
6. Accessory uses when part of an educational or non-profit (non-commercial) use.
7. Subject to Section 17.08.020 (D)(2) for RR zone and Section 17.18.030(B)(2) for CR zone.
8. Subject to Section 17.08.020 (C)(5)for RR zone and Section 17.10.020(C)(5) for SF zone.
9. Subject to Section 17.08.020 (D)(1) for RR zone and Section 17.18.030(B)(1) for CR zone.

10. Subject to Section 17.08.030 (B), except that the minimum area required shall be 5 acres.
11. Subject to Section 17.08.020(D)(4) for RR zone and Section 17.18.030(B)(5) for CR zone.
12. Maximum interior occupancy of 125 persons.
13. If exceeding interior occupancy of 125 persons.
14. By hand only.
15. Subject to Section 17.08.040(F).
16. Subject to provisions of Section 17.34.030 when a facility is located within a side or rear yard adjacent to a residentially-zoned parcel.
17. Sports field lighting shall be limited to the main sports field at Malibu High School and subject to the standards of LIP Sections 4.6.2 and 6.5(G).
18. Charitable, philanthropic, or educational non-profit activities shall be limited to permanent uses that occur within an enclosed building.
19. Subject to Section 17.26.030(A)(1).
20. Subject to Section 17.08.040(C).
21. Limited to public agency use only (not for private use).
22. Conditionally permitted only when facilities are ancillary to the Civic Center Wastewater Treatment Facility, including, but not limited to, injection wells, generators, and pump stations.
23. Residential care facilities for the elderly are limited to operation by a non-profit only.
24. This use is conditionally permitted in the Civic Center Wastewater Treatment Facility Institutional Overlay District and only when associated with the existing wastewater treatment facility or with the Civic Center Wastewater Treatment Facility.
25. CUP required unless located in public right-of-way.
26. Subject to Section 17.22.040(N).
27. Subject to Section 17.66.120.
28. Transitional and supportive housing is permitted in the same manner as one single-family residence and is subject to all the restrictions that apply to single family residential uses.
29. Transitional and supportive housing is permitted in the same manner as a multifamily residential use and is subject to all the restrictions that apply to multifamily residential uses.
30. Multifamily development associated with an affordable housing development project is permitted by right.
31. Multifamily development is only permitted in the CC zone if it is associated with an affordable housing development project within the Affordable Housing Overlay (APNs 4458-022-023 and 4458-022-024 only), in compliance with Section 3.4.5 of the LIP.
32. Single-family residence properties are limited to hosted short-term rental permits only; one dwelling unit in a duplex may be rented unhosted if the owner or designated operator lives onsite in the other dwelling unit during the rental period; and for multifamily properties, a maximum of two dwelling units per parcel, or 40%, whichever is less, may be devoted to short-term rental use.
33. Subject to Chapter 17.44.- Accessory Dwelling Units.

(Ord. 449 § 8, 2019; Ord. 431 § 4, 2018)

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To: Planning Directors of Coastal Cities and Counties
From: John Ainsworth, Executive Director, California Coastal Commission
Date: January 21, 2022

RE: Updates Regarding the Implementation of New ADU Laws

I. Introduction

California's ongoing housing crisis continues to exacerbate housing inequity and affordability, especially in the coastal zone. To address this critical issue, the state Legislature has enacted a number of laws in the last several years that are designed to reduce barriers to providing housing and to encourage construction of additional housing units in appropriate locations. To this end, the 2019 legislative session resulted in a series of changes to state housing laws that facilitate the development of Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs), which can help provide additional housing units that can be more affordable than other forms of market rate housing. Importantly, the changes did not modify existing provisions of state housing law that explicitly recognize that local governments must still abide by the requirements of the Coastal Act, and by extension, Local Coastal Programs (LCPs). Thus, provisions on coastal resource protection must be incorporated into the planning and development process, and into updated LCP J/ADU requirements, when considering J/ADUs in the coastal zone.

The Coastal Commission strongly encourages local governments to update their LCPs with J/ADU provisions in a manner that harmonizes the State's housing laws with the Coastal Act. Doing so would protect the State's coastal resources while also reducing barriers to constructing J/ADUs and helping to promote more affordable coastal housing.

The Coastal Commission has previously circulated three memos to assist local governments with understanding how to carry out their Coastal Act obligations while also implementing state requirements regarding the regulation of J/ADUs. These memos have raised some questions for local governments, including the manner in which they are to be understood together. In order to address this issue, and to reflect lessons learned regarding J/ADU regulation in the coastal zone in the past few years, this updated memo supersedes and replaces these prior memos. This updated memo also elaborates on the changes to state housing laws that went into effect on January 1, 2020 and provides further information to help local governments harmonize these laws with the Coastal Act. This memo will briefly discuss the authority that the Coastal Act grants the Commission and local governments over housing in the coastal zone, new legislation regarding J/ADUs, how local governments can streamline J/ADU applications under the Coastal Act, and some key issues that should be considered when LCP amendments for J/ADU

provisions are undertaken. This memo is intended to provide general guidance for local governments with fully certified LCPs. The Coastal Commission is responsible for Coastal Act review of J/ADUs in most areas that are not subject to a fully certified LCP. Local governments that have questions about specific circumstances not addressed in this memo should contact the appropriate district office of the Commission.

II. Coastal Act Authority Regarding Housing in the Coastal Zone

The Coastal Act has a variety of provisions directly related to housing. Relevant here, the Coastal Act does not negate local government compliance with state and federal law "with respect to providing low- and moderate-income housing, replacement housing, relocation benefits, or any other obligation related to housing imposed by existing law or any other law hereafter enacted." (Pub. Res. Code § 30007.) The Coastal Act also requires the Coastal Commission to encourage housing opportunities for low- and moderate-income households (Pub. Res. Code § 30604(f)) but states that "[n]o local coastal program shall be required to include housing policies and programs. (Pub. Res. Code § 30500.1.) Finally, new residential development must be "located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it" or in other areas where development will not have significant adverse effects on coastal resources. (Pub. Res. Code § 30250.)

While the Commission does not currently have the explicit authority to provide or protect affordable housing in the coastal zone, the Commission has continued to preserve existing density and affordable housing whenever possible, including by supporting and encouraging the creation of J/ADUs. The creation of new J/ADUs in existing residential areas is one of many strategies that aims to increase the housing stock, including creating additional housing units of a type and size that can be more affordable than other forms of housing in the coastal zone, in a way that may be able to avoid significant adverse impacts on coastal resources.

III. Overview of New Legislation

As of January 1, 2020, AB 68, AB 587, AB 881, AB 670, AB 671, and SB 13 collectively updated existing Government Code Sections 65852.2 and 65852.22 concerning local government review and approval of J/ADUs, and as of January 1, 2021, AB 3182 further updated the same laws, with the goal of increasing statewide availability of smaller, and potentially more affordable, housing units. Importantly, some of the changes affect local governments in the coastal zone and are summarized below.

- Local governments continue to have the discretion to adopt J/ADU provisions that are consistent with state law, and they may include specific requirements for protecting coastal resources and addressing issues such as design guidelines and protection of historic structures.

- Outside of an LCP context, existing or new J/ADU provisions that do not meet the requirements of the new legislation are null and void and will be substituted with the

provisions of Section 65852.2(a) until the local government comes into compliance with new provisions. (Gov. Code § 65852.2(a)(4).) However, existing J/ADU provisions contained in certified LCPs are not superseded by Government Code Section 65852.2 and continue to apply to Coastal Development Permit (CDP) applications for J/ADUs until the LCP is modified. Coastal jurisdictions without any J/ADU provisions or with existing J/ADU provisions that were adopted prior to January 1, 2020 are encouraged to update their LCPs to comply with the State's new laws. Such new or updated LCP provisions need to ensure that new J/ADUs will protect coastal resources in the manner required by the Coastal Act and LCP, including, for example, by ensuring that new J/ADUs are not constructed in locations where they would require the construction of shoreline protective devices, in environmentally sensitive habitat areas and wetlands, or in areas where the J/ADU's structural stability may be compromised by bluff erosion, flooding, or wave uprush over the structure's lifetime.

- A major change to Section 65852.2 is that the California Department of Housing and Community Development (HCD) now has an oversight role to ensure that local J/ADU provisions are consistent with state law. If a local government adopts an ordinance that HCD deems to be non-compliant with state law, HCD can notify the Office of the Attorney General. (Gov. Code § 65852.2(h)(3).) To ensure a smooth process, local governments should submit their draft J/ADU provisions to HCD and Coastal Commission staff to review for housing law and Coastal Act consistency before they are adopted locally and should continue to foster a three-way dialogue regarding any potential issues identified. Additionally, Coastal Commission and HCD staff meet regularly to discuss and resolve any issues that arise in the development of J/ADU provisions in the coastal zone. The Commission continues to prioritize J/ADU LCP amendments, and some may qualify for streamlined review as minor or de minimis amendments. (Pub. Res. Code § 30514(d); 14 Cal. Code Regs. § 13554.)

- In non-coastal zone areas, local governments are required to provide rapid, ministerial approval or disapproval of applications for permits to create J/ADUs, regardless of whether the local government has adopted updated J/ADU provisions. (Gov. Code § 65852.2(a)(3).) In the coastal zone, CDPs are still necessary in most cases to comply with LCP requirements (see below); however, a local public hearing is not required, and local governments are encouraged to streamline J/ADU processes as much as feasible.

Other recent legislative changes clarify that local J/ADU provisions may not require a minimum lot size; owner occupancy of an ADU (though if there is an ADU and a JADU, one of them must be owner-occupied); fire sprinklers if such sprinklers are not required in the primary dwelling; a maximum square footage of less than 850 square feet for an ADU (or 1,000 square feet if the ADU contains more than one bedroom); and in some cases, off-street parking. Section 65852.2(a) lists additional mandates for local governments that choose to adopt a J/ADU

ordinance, all of which set the "maximum standards that local agencies shall use to evaluate a proposed [ADU] on a lot that includes a proposed or existing single-family dwelling." (Gov. Code § 65852.2(a)(6).) As indicated above, in specific cases coastal resource considerations may negate some such requirements, but only when tied to a coastal resource impact that would not be allowed under the Coastal Act and/or the LCP. In recent LCP amendments, these types of considerations have most often arisen in terms of the off-street parking provisions (see below).

IV. General Guidance for Reviewing J/ADU Applications

The following section lays out the general permitting pathway in which local governments can process J/ADU applications in a manner that is consistent with Coastal Act requirements and LCP provisions.

1) Check prior CDP history for the site.

Determine whether a CDP or other form of Coastal Act/LCP authorization was previously issued for development of the site and whether that CDP and/or authorization limits, or requires a CDP or CDP amendment for, changes to the approved development or for future development or uses of the site. The applicant should contact the appropriate Coastal Commission district office if a Commission-issued CDP and/or authorization affects the applicant's ability to apply for a J/ADU.

2) Determine whether the proposed J/ADU constitutes "development."

As defined by the Coastal Act, development refers to both "the placement or erection of any solid material or structure" on land as well as any "change[s] in the density or intensity of use of land[.]" (Pub. Res. Code § 30106.) Most J/ADUs constitute development if they include, for example, new construction of a detached ADU, new construction of an attached J/ADU, or conversion of an existing, uninhabitable, attached or detached space to a J/ADU (such as a garage, storage area, basement, or mechanical room). The construction of new structures constitutes the "placement or erection of solid material," and the conversion of existing, uninhabitable space would generally constitute a "change in the density or intensity of use." Therefore, these activities would generally constitute development in the coastal zone that requires a CDP or other authorization. (Pub. Res. Code § 30600.)

Unlike new construction, the conversion of an existing, legally established habitable space to a J/ADU within an existing residence, without removal or replacement of major structural components (e.g., roofs, exterior walls, foundations, etc.), and which does not change the intensity of use of the structure, may not constitute development within the definition in the Coastal Act. An example of a repurposed, habitable space that may not constitute new development (and thus does not require Coastal Act or LCP authorization) is the conversion of an existing bedroom within a primary structure.

Previously circulated Commission J/ADU memos (being superseded and replaced by this memo) indicated that construction or conversion of a J/ADU contained within or directly attached to an existing single-family residence (SFR) may qualify as development that was exempt from the requirement to obtain a CDP. Specifically, the Coastal Act and the Commission's implementing regulations identify certain improvements to existing SFRs that are allowed to be exempted from CDP requirements (Pub. Res. Code § 30610(a); 14 Cal. Code Regs § 13250.) Although the Commission has previously certified some LCP amendments that permitted certain exemptions for such ADU development, in a recent action, the Commission reevaluated its position and found that "the creation of a self-contained living unit, in the form of an ADU, is not an 'improvement' to an existing SFR. Rather, it is the creation of a new residence. This is true regardless of whether the new ADU is attached to the existing SFR or is in a detached structure on the same property." [1] *On this basis, and based on the finding that a variety of types of J/ADUs—including both attached and detached J/ADUs—could have coastal resource impacts that make exemptions inappropriate, it rejected the local government's proposed exemptions for certain J/ADUs. Local governments considering updating LCP J/ADU provisions should consider the Commission's recent stance regarding exemptions for ADUs and may work with Commission staff to determine the best way to proceed on this issue.*

3) If the proposed J/ADU constitutes development, determine whether a CDP waiver or other type of expedited processing is appropriate.

If a local government's LCP includes a waiver provision, and the proposed J/ADU meets the criteria for a CDP waiver, the local government may issue a CDP waiver for the proposed J/ADU. The Commission has generally allowed a CDP waiver for proposed J/ADUs if the Executive Director determines that the proposed development is de minimis (i.e., it is development that has no potential for any individual or cumulative adverse effect on coastal resources and is consistent with all Chapter 3 policies of the Coastal Act). Such a finding can typically be made when the proposed J/ADU project has been sited, designed, and limited in such a way as to ensure any potential impacts to coastal resources are avoided (such as through habitat and/or hazards setbacks, provision of adequate off-street parking to ensure that public access to the coast is not impacted, etc.). (*See* Pub. Res. Code § 30624.7.) Projects that qualify for a CDP waiver typically allow for a reduced evaluation framework and streamlined approval.

Most, if not all, LCPs with CDP waiver provisions do not allow for waivers in areas where local CDP decisions are appealable to the Coastal Commission. There have been a variety of reasons for this in the past, including that the Commission's regulations require that local governments hold a public hearing for all applications for appealable development (14 Cal. Code Regs § 13566), and also that development in such areas tends to raise more coastal resource concerns and that waivers may therefore not be appropriate. However, under the state's J/ADU provisions, public hearings are not required for qualifying development.

Because of this, the above-described public hearing issue would not be a concern, so it could be appropriate for LCPs to allow CDP waivers in both appealable and non-appealable areas at least related to this criterion. Local governments should consult with Commission staff should they consider proposing CDP waiver provisions in their LCP. Any LCP amendment applications that propose to allow waivers in appealable areas should ensure that there are appropriate procedures for notifying the public and the Commission regarding approvals of individual, appealable waivers (such as Final Local Action Notices) so that the proper appeal period can be set, and any appeals received are properly considered.

The Coastal Act also provides for other streamlined processing for certain types of development, including for minor development. (Pub. Res. Code § 30624.9.) In certain cases, categories of development can also be excluded from CDP requirements if certain criteria are met (see box). In any case, local governments without such CDP waiver and other processing and streamlining tools are encouraged to work with Commission staff to amend their LCP to include such measures.

Coastal Act section 30610(e) allows certain categories of development that are specified in Commission-approved Categorical Exclusion (Cat Ex) Orders to be excluded from CDP requirements, provided that the category of development has no potential for any significant adverse effect, either individually or cumulatively, on coastal resources. (See also 14 Cal. Code Regs §§ 13240 et seq.)

Cat Ex Orders apply to specific types of development within identified geographical locations. For example, the Commission may approve a Categorical Exclusion for J/ADUs that would normally require a CDP (i.e., it is defined as development) because that specific development type in that specific geographic area can be demonstrated to not result in individual and/or cumulative coastal resource impacts. Cat Ex Orders are prohibited from applying to: tide and submerged lands; beaches; lots immediately adjacent to the inland extent of any beach; lots immediately adjacent of the mean high tide line of the sea where there is no beach; and public trust lands.

Cat Ex Orders provide another potential means of streamlining J/ADU consideration, and interested local governments should consult with Commission staff if they intend to propose such an Order. Cat Ex Orders are processed separately from LCP amendments, require a 2/3 vote of the Commission to be approved, and are typically subject to conditions. Once approved, the local government is responsible for reviewing development that might be subject to the Cat Ex Order and is typically required to report any exclusions applied pursuant to the Order to the Commission for review by the Executive Director and for an appeal period before they can become effective. It is important to note that while Cat Ex Orders can be a powerful tool if approved, the Commission must be able to conclude that the specific category of development in a specific geographic area has no potential for any significant adverse coastal resources impacts in order to approve one. Thus, the local government pursuing a Cat Ex Order must provide supporting documentation and evidence that can conclusively show that to be the case.

4) If a full CDP is required, review CDP application for consistency with certified LCP requirements.

If a proposed J/ADU constitutes development and cannot be processed as a waiver or similar expedited Coastal Act approval authorized in the certified LCP, it requires a CDP. The CDP must be consistent with the requirements of the certified LCP and, where applicable, the public access and recreation policies of the Coastal Act. The local government must then provide the required public notice for any CDP applications for J/ADUs and process the application pursuant to LCP requirements, but should process it within the time limits contained in the ADU law, if feasible. However, local governments are not required to hold a public hearing on CDPs for ADUs. (Gov. Code § 65852.2(l).) Once the local government has issued a decision, it must send the required final local action notice to the appropriate district office of the Commission. If the CDP is appealable, a local government action to approve a CDP for the ADU may be appealed to the Coastal Commission. (Pub. Res. Code § 30603.)

V. Key Considerations

Per Government Code Section 65852.2, subd. (l), known as the Coastal Act Savings Clause, the State's new ADU requirements shall not be "construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976." There are a number of key issues that local governments should account for in order to ensure their LCP J/ADU provisions are consistent with the requirements in the Coastal Act. This section addresses some of the key issues that the Commission has dealt with recently, including public coastal access parking requirements and protection of sensitive habitats and visual qualities. Local governments are encouraged to contact their local Coastal Commission district office for further assistance.

Protection of public recreational access in relation to parking requirements

Government Code Section 65852.2 requirements regarding parking for J/ADUs are as follows:

a. One parking space is required per unit or per bedroom, whichever is less. The parking space can be a tandem space in an existing driveway.

b. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU, no replacement parking space(s) are required.

However, Section 65852.2 further stipulates that the parking requirements listed above do not apply to ADUs constructed:

a. Within ½ mile walking distance of public transportation stops/routes;

b. Within a historic district;

c. Within a primary residence or accessory structure;

d. When on-street parking permits are required but not offered to the occupant of the ADU;

e. And where a car-share vehicle is located within one block of the ADU.

Thus, the Government Code limits the circumstances when a local government can require a J/ADU project to address its parking needs onsite. This is a departure from most local government parking requirements which often explicitly specify the number of off-street parking spaces that must be provided onsite in any particular development, including residential development. The potential outcome is that private residential J/ADU parking needs can be shifted onto adjacent public streets. At the same time, the Coastal Act contains objectives and policies designed to protect and provide for maximum coastal access opportunities, which includes maintaining sufficient public coastal parking, including as implemented through LCP off-street parking provisions. The addition of J/ADUs may interfere with coastal public street parking availability if, for example, a garage is converted to a J/ADU and parking is not replaced onsite, in addition to the J/ADU parking demand itself. The Commission has often found that when private residential parking needs are not accommodated onsite, it can lead to increased use of on-street parking to address such needs, thereby reducing the availability of on-street parking to the general public. This may adversely affect public coastal access if it occurs in high visitor-serving areas and/or areas with significant public recreational access opportunities, and where on-street parking is heavily used. The result will be that the general public could be displaced from on-street parking by J/ADU parking needs, which may violate the Coastal Act's requirements to protect, provide, and maximize public coastal access and recreational opportunities. In many impacted coastal neighborhoods, development patterns over the years have not adequately accounted for off-street parking needs, and adding J/ADU parking to the mix will only exacerbate such public parking difficulties. Additionally, because general on-street parking is typically free or lower cost compared to other public parking facilities, J/ADU construction may also interfere with maintaining lower cost coastal access for all.

In order to avoid conflicts regarding parking requirements for J/ADUs as they may impact public access, local governments are encouraged to work with Commission staff to identify or map specific neighborhoods and locations where there is high visitor demand for public on-street parking needed for coastal access and to specify parking requirements for each such area that harmonizes Government Code requirements with the Coastal Act (and any applicable LCP policies). These maps can denote areas that supply important coastal public parking and access opportunities, and require that J/ADU development in these areas ensure that private residential parking needs are accommodated off-street. Importantly, such upfront LCP mapping and provisions allow the local government to address impacts to public access and parking supply without the need for a protracted, or even necessarily a discretionary, decision. The Commission has previously found that local governments may include specific off-street parking requirements for J/ADUs constructed in these locations and may also require maintenance of all off-street parking for the primary residence (see examples below). However, harmonizing the distinct priorities between the Coastal Act's protection of public coastal access and the J/ADU provisions on parking requirements will require a case-by-case consideration of the specific circumstances of each jurisdiction.

Protection of sensitive habitats and visual qualities; avoidance of hazards

While most J/ADU projects take place within established residential neighborhoods where potential coastal resource impacts are fairly limited, there can be cases where such projects may affect significant coastal resources, such as sensitive habitats and shorelines and beaches. As a general rule, LCPs include many provisions protecting such resources, and it is important that proposed J/ADU provisions are not structured to undo any such LCP protections that already apply. J/ADUs may need to be reviewed for specific siting and design standards, particularly in visually sensitive areas (such as the immediate shoreline, between the first public road and the sea, near LCP-designated scenic areas, etc.). Similarly, where sensitive habitat may be present, J/ADUs must be reviewed for impacts to such habitat, including with respect to fuel modification for defensible space. Additionally, local governments should include provisions for J/ADUs constructed in areas vulnerable to sea level rise and other coastal hazards which ensure not only that these structures will meet all LCP requirements for new development to be safe from such hazards, but that also addresses the need for future sea level rise adaptations (including future accommodation or removal, risk disclosure conditions on the J/ADU, and any other risk-related issues dealt with in the LCP).

VI. Examples of Recently Updated ADU Provisions in Certified LCPs

A number of local jurisdictions have recently updated their LCPs to include new J/ADU provisions. Coastal Commission staff reports are linked below, which summarize specific issues that arose between Coastal Act requirements and the new J/ADU provisions as well as the necessary changes that were made in order to harmonize each jurisdiction's LCP with the State's housing laws. The suggested modifications shown in the staff reports were all approved by the Coastal Commission.

City of Santa Cruz (approved May 2021). This LCP amendment included clarifying language to address which provisions of the new state housing laws applied to ADUs in the coastal zone of the City of Santa Cruz as well as ensuring that the coastal resource protection provisions of the City's current LCP are maintained. The amendment also addressed specific off-street parking requirements for ADUs sited near significant coastal visitor destinations. The City of Santa Cruz adopted the Commission's modifications in August 2021.

City of Pacifica (approved June 2021). This LCP amendment revised the City's Implementation Plan to incorporate J/ADU provisions that are in line with the updated state housing laws, including streamlined procedures for J/ADU review and permitting processing, providing J/ADU development standards, and crafting tailored modifications to address specific public access parking needs in key visitor destination areas. The City of Pacifica adopted the Commission's modifications in August 2021.

County of San Mateo (approved July 2021). This LCP amendment incorporated more specific ADU regulations relating to size limits, maximum number of J/ADUs permitted per lot, streamlined review and process of J/ADU permits, and parking availability in areas that are

significant coastal visitor destinations. The County of San Mateo adopted the Commission's modifications in September 2021.

City of Encinitas (approved August 2021). The Coastal Commission approved revisions to the City of Encinitas' Implementation Plan that updated existing definitions for ADUs and JADUs and clarified development standards for accessory units, including standards for size, height, and setbacks.

City of Santa Barbara (approved December 2021). The Coastal Commission approved Commission staff's revision of the City of Santa Barbara's LCP amendment submittal addressing updated ADU provisions to be consistent with state housing laws. The amendment revised J/ADU terms and definitions, building standards, parking requirements, and permitting review and processing procedures. The staff report included modifications that address the CDP exemption issue (discussed above).

ATTACHMENT 3 – HOUSEKEEPING AMENDMENTS

TITLE 17 - ZONING		
Chapter/Section	Section Name	Required Change
Chapter 17.02	Introductory Provision and Definitions	Add definitions related to ADU and Junior ADU regulations and delete second unit definition
Chapter 17.08	Rural Residential Zone-Permitted Uses	Change second unit to ADU consistent with new ADU Chapter 17.44 and change guest units to guest houses consistent with new Section 17.40.040(A)(21)
Chapter 17.10	Single Family Zone-Permitted Uses	Change second unit to ADU consistent with new ADU Chapter 17.44 and change guest units to guest houses consistent with new Section 17.40.040(A)(21)
Chapter 17.12	Multifamily Zone-Permitted Uses	Change second unit to ADU consistent with new ADU Chapter 17.44 and change guest units to guest houses consistent with new Section 17.40.040(A)(21)
Chapter 17.14	Multifamily Beach Front Zone-Permitted Uses	Change second unit to ADU consistent with new ADU Chapter 17.44 and change guest units to guest houses consistent with new Section 17.40.040(A)(21)
Chapter 17.39	Malibu Coast Estates	Change second unit and guest house references to ADU or guest house
Chapter 17.40	Property Development and Design Standards	Add new Section 17.40.0040 (A)(21) to regulate guest houses
Chapter 17.44	Accessory Dwelling Units	Add new Chapter for ADU regulations
Chapter 17.45	Citywide View Preservation and Restoration	Change 2nd unit and granny flats to ADU in the definition section
Appendix A	Permitted Use Table	Delete second units and add ADUs as a permitted use in RR, SF, MF, and MFBF zones and change guest unit to guest house
LOCAL COASTAL PROGRAM – LAND USE PLAN (LUP)		
Chapter 3	Marine and Land Resources	Change second unit references to ADU
Chapter 5	New Development	Change second unit references to ADU
LOCAL COASTAL PROGRAM – LOCAL IMPLEMENTATION PLAN (LIP)		
Chapter 2	Definitions	Add definitions related to ADUs and Junior ADUs and delete second unit definition
Chapter 3 - Q.	Planned Development Zone	Change reference to second unit to ADU and guest unit to guest house
Chapter 3 – 3.6	Residential Development Standards	Delete 2nd unit regulations and create new Chapter 3.10 for ADU regulations

		Change the use of TDSF in development standards of Guest Houses to “maximum square footage” to be consistent with the proposed ADU language
Chapter 13	Coastal Development Permits	Add new section (13.30) for ADU Administrative CDP
Appendix I	Table B – Permitted Uses	Delete second units and add ADUs as a permitted use in RR, SF, MF, and MFBF zones and change guest unit to guest house

Attachment 4
Summary of Accessory Dwelling Unit (ADU) Regulations

The following information summarizes some of the new regulations.

1) ADU Unit Size: A city is prohibited from creating an allowable square footage maximum for ADUs that are less than 850 square feet for a studio or one-bedroom unit or 1,000 square feet for a two-bedroom unit. The minimum size of an ADU is 220 square feet for the living area of an efficiency unit plus a closet and bathroom, pursuant to State Health and Safety Code 17958.1 which relies on the definition of an efficiency unit in the California Building Code. The City's current maximum second unit size is 900 square-feet. Staff is recommending maximums of 900 square-feet (studio/one bedroom) and 1,200 square feet (2 bedroom). This would be consistent with existing second unit requirements and with the square footage allowed for temporary housing for fire rebuilds, some of which are expected to be converted into permanent units in the future. A City does have the option of being less restrictive than State law.

   For ADUs processed inside a primary dwelling or existing accessory structure, State law does not limit the size of the ADU unless they are a proposed in a primary dwelling as a JADU with an efficiency kitchen. This would mean that - under the Zoning Ordinance that is required by state law - a property owner could apply for an ADU of any size if the ADU is proposed in a primary dwelling or existing accessory building. However, every ADU is reviewed first under the Local Coastal Program (LCP) before it is subject to the Zoning Ordinance, and if the ADU is found to meet the definition of development and is processed under the LCP, the LCP restricts the size of those units to the same size limits (900 to 1,200 square feet) of other ADUs.

2) Very High Fire Severity Zone: The entire City of Malibu is in a designated "Very High Fire Severity Zone (VHFSZ). There are no Los Angeles County Fire Department requirements for an accessory dwelling unit or junior accessory dwelling unit proposed on a property with only one means of access; however, State law allows jurisdictions to consider safety in identifying areas where ADUs are either not appropriate or require additional safety regulations. The proposed amendments address ADUs on lots that do not have at least two distinct means of vehicular access which places these lots at increased fire risk. Additional requirements for these lots include the installation of fire sprinklers, on-site replacement of parking removed for garage conversions, and increased side and rear yard setbacks in Zoning Ordinance. In LCP, existing setback standards would be required.

3) Application of Development Standards: Ordinarily, development standards could constrain the size of an ADU, but ADU laws prohibit the application of lot coverage, minimum lot size, floor area ratio, or open space requirements from reducing the size to less than 800 square feet. However, if during the initial LCP review a project is determined to meet the definition of development, the ADU would be processed under the LIP with an ADU CDP. In this case the City must apply any applicable coastal resources protection standards to the project to ensure consistency with the LCP including Section 3.10 so if development

on the property where the ADU is proposed already meets or exceeds the maximum Total Development Square Footage (TDSF) or amount of impermeable coverage, an ADU would only be allowed in an existing legal structure.

4) Size of Attached ADU: A city can limit the size of an ADU to 50% of the square footage of the existing or proposed single-family structure that is the primary use on the lot. This could result in an ADU that is smaller than 900 or 1,200 square feet.

5) Setbacks: A city can require only a 4-foot rear and side yard setback for ADUs unless the dwelling is in a VHFHZ with only one means of ingress/egress. This will be the requirement in the Zoning Ordinance but if the ADU is determined to meet the definition of development and then standard setbacks apply.

6) Height: State law establishes a minimum height of 16 feet for ADUs. Staff is proposing to use 16 feet for Building Permit Only projects. Projects that are subject to either an ADU APR in the Zoning Ordinance or an ADU ACDP in the LIP, would be allowed at 18 feet in height and up to 24 or 28 feet with a Site Plan Review.

7) ADUs in Multifamily Zones: A city must allow up to two detached ADUs on any property that has an existing multifamily structure if each detached ADU meets the following standards: 4-foot side and rear yard setbacks and maximum 16 feet in height as a building permit only project in the Zoning Ordinance. If an upgrade to the onsite wastewater treatment system is required, an OWTS CDP would be required. If the project is determined to be development, a ADU CDP would be required.

8) Multiple ADUs within Multifamily Buildings: A city must allow at least one ADU to be created from nonlivable space within an existing multifamily dwelling structure up to a quantity equal to 25 percent of the existing multifamily units as a building permit only project.

In Malibu, the LCP contains multiple standards that address potential coastal resource impacts, including those related to onsite wastewater treatment and adequate onsite parking to avoid impacts to public parking for coastal resources like trails and beach parks. Any proposed ADUs on a multifamily property would first need to be reviewed for compliance with these standards as part of the initial LCP review. If the project is found to be meet the definition of development, then a ADU CDP would be required.

While multiple ADUs could be allowed, the property's onsite wastewater treatment system capacity may need to be upgraded which would require an OWTS CDP. Also, if existing garages are converted, residents and their guests would likely seek parking on surrounding streets, which could impact coastal access. Because State law does not allow cities to require parking for ministerial (building permit only) ADUs a parking review and analysis would be part of the initial LCP review to determine whether the project would not be subject to the LCP. If the ADUs are being proposed in existing parking spaces, replacement parking would be required if the subject property is within 0.25 miles of a beach, trail head, or other coastal amenity. This is required to ensure parking for residents

does not spill over to the adjacent public streets used by coastal visitors. If the project is determined to not meet the definition of development, it could be processed under the Zoning Ordinance as a building permit only project.

9) Replacement Parking: A city is not allowed to require replacement parking spaces when a parking structure (e.g., garage) is demolished or converted to construct an ADU. If replacement parking is voluntarily proposed, the parking must be located on hardscape and mechanical automobile parking lifts must be located within an enclosed structure to ensure compliance with coastal resource protection for public views and water quality. The proposed ordinance does require replacement parking onsite for single family dwellings in a VHFHZ with only one means of ingress/egress and properties located within .25 mile of a beach, public accessway, park or trailhead or other public visitor-serving area.

10) Parking Location: A city is required to allow parking to be located within setback areas, including a tandem parking configuration, except where it is not feasible based on specific site topographic or fire and life safety conditions. In Malibu, this will be allowed under the Zoning Ordinance, and it would be allowed under the LCP as well except where not feasible as described above, and where it would violate a coastal resource protection standard of the LCP, such as ESHA protection or view corridor requirement.

11) Owner Occupancy: A requirement for owner-occupancy on the lot with an ADU cannot be required until after January 1, 2025. Owner-occupancy for regular ADUs is not proposed. Owner-occupancy requirements are required for JADUs and the proposed amendments include this provision in the Zoning Ordinance which states that the property owner must reside in either the primary dwelling or JADU. The proposed amendments require the owner-occupancy requirement be recorded as part of a deed restriction.

12) Demolition and Replacement of Structures: A city cannot require an additional setback when an existing living area or accessory structure is demolished and is replaced with a new structure for the purposes of creating an ADU, so long as the replacement structure is constructed within the same location and contains the same dimensions as the structure it is replacing. This would mean that an existing accessory building with nonconforming setbacks could demolish more than 50% of exterior walls if the building was being converted to an ADU. This provision is included in the Zoning Ordinance.

If the ADU is found to meet the definition of development, the ADU would be processed under the LIP with an ADU CDP. In that situation a replacement structure is required to comply with regular setback standards if more than 50% of the exterior walls are demolished.

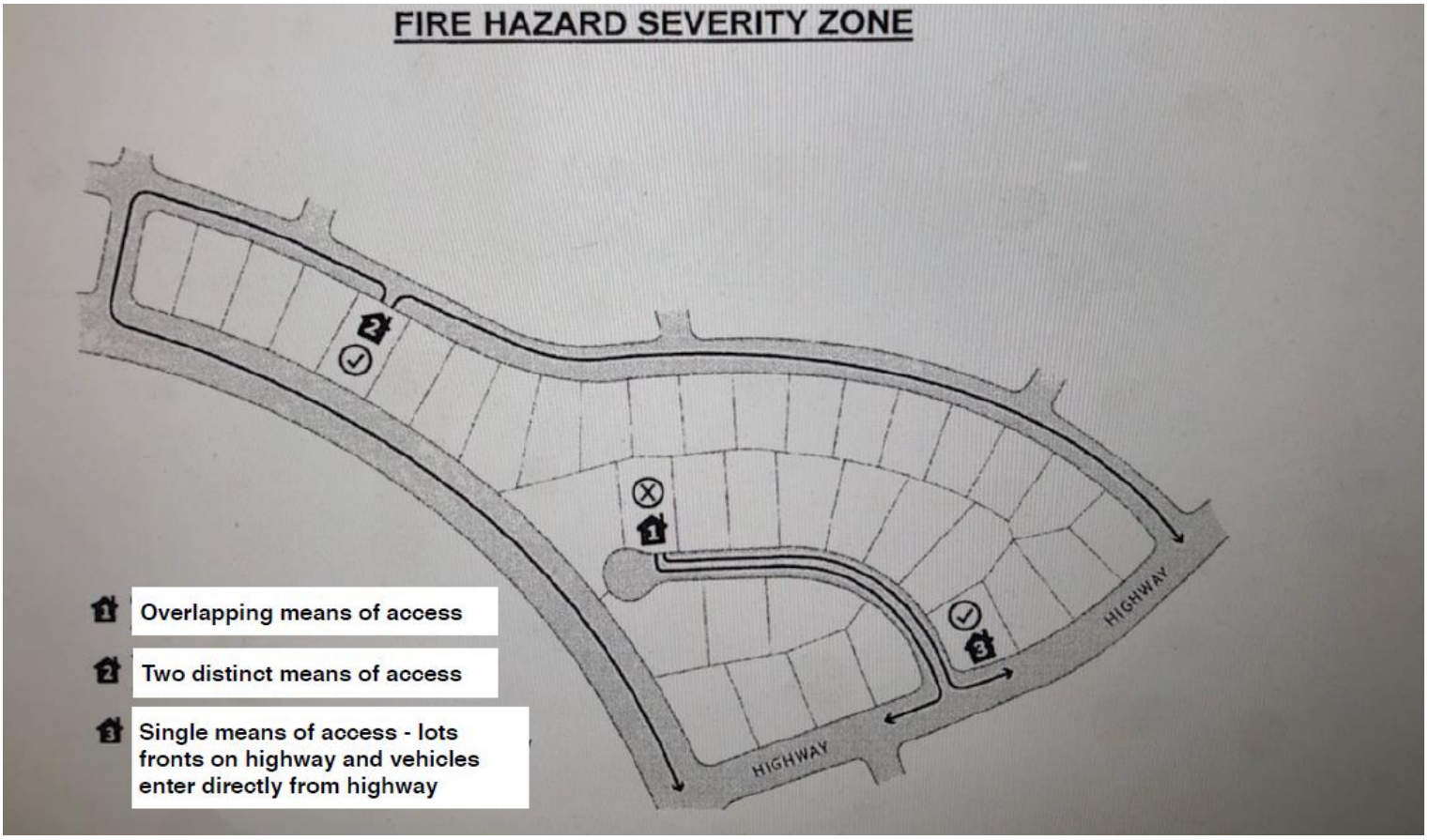
13) Short Term Rentals (STR): State law prohibits STRs only in the ministerially approved building permit only projects but for all other ADUs, the term "may" prohibit is utilized. As directed by the Planning Commission at its last hearing the proposed amendments prohibit STRs in all ADUs and JADUs. ADUs can provide units that can be utilized to meet the City's Regional Housing Needs Allocation (RHNA) and the proposed amendments includes an rental rate reporting requirement to further this goal.

14) Impact Fees: No impact fees will be allowed for ADUs that are less than 750 square feet. However, the new laws will allow impact fees to be imposed for ADUs greater than 750 square feet. These fees must be determined by the ADU square footage.

15) Separate Conveyances: New State law creates a limited exception to the prohibition of allowing ADUs to be sold or otherwise conveyed separately from the primary dwelling if certain conditions are met. These conditions include, among others, that the property was built by a qualified nonprofit, there is an enforceable restriction on the use of the land between the nonprofit and the qualified low-income buyer and the property is held in a tenancy-in-common agreement. This is an optional provision and staff has not included this provision in the proposed ordinance.

16) Review by HCD: State law requires that each local jurisdiction submit its ADU ordinance to HCD within 60 days after adoption so that HCD can verify compliance of the adopted ordinance with the State law. Failure to provide an ordinance that complies with State law would require HCD to notify the Attorney General that the local jurisdiction is in violation of State law. Staff would submit the Zoning Ordinance to HCD for review concurrently with submitting the LCPA to the CCC for certification.

Illustration of Two Means of Access for Very High Fire Hazard Severity Zone



Kathleen Stecko

Subject: ADU ordinance - Planning Commission Meeting January 6, 2020

From: Helmut Meissner
Sent: Monday, December 23, 2019 5:08 PM
To: Justine Kendall <jkendall@malibucity.org>
Subject: ADU ordinance - Planning Commission Meeting January 6, 2020

Dear Ms. Kendall,

I am a homeowner in the Malibu Country Estates (in the following: "MCE") Overlay District and would like to draw the Commission's attention to an inconsistency in the proposed changes to the Malibu Municipal Code (as published in the Commission Agenda Report of August 23, 2018 re Accessory Dwelling Units).

The Agenda Report contains a list of draft amendments to update the LCP and Malibu Municipal Code consistent with recent changes in State law regarding ADUs. As it relates to tiny houses, the Agenda Report notes (page 9): "… they could be utilized for an ADU; however, they would need to be on a permanent foundation pursuant to the proposed ordinance."

The requirement of a permanent foundation is, however, inconsistent with the following provision, which explicitly prohibits the creation of a (second) foundation within any given property:

> Chapter 17.42 (Custom Development Criteria), Section 20 (Overlay Districts) Subsection D (Malibu Country Estates Overlay District) Paragraph 6, in its current version, reads as follows:
>
> *6. Site of Construction. There shall be no site of construction requirement, except for the following requirements:*
> *a. All development, excluding walls and fences, shall be limited to the existing building pad.*
> *b. There shall be no more than one building pad per lot.*

Nothing in the proposed ADU ordinance seems to prevent a homeowner in the MCE to create, if feasible, an ADU on the *existing* building pad. However, the restriction marked in red above disenfranchises homeowners who can not implement an ADU on the existing pad, but whose properties are large enough to accommodate an ADU outside the existing building pad. Such a homeowner would not be able to utilize, for example, a tiny home for an ADU because the aforementioned restriction does not allow the necessary foundation.

It is evident the noted restriction was originally put in place to prevent ADUs in the first place. There is no other reasonable explanation for this clause.

Hence, I would like to respectfully request the following amendments to Paragraph 6 to be included for the purpose of the ADU ordinance:

> *6. Site of Construction. There shall be no site of construction requirement, except for the following requirements:*
> *a. All development, excluding walls, ~~and~~ fences and accessory dwelling units, shall be limited to the existing building pad.*
> *b. There shall be no more than one building pad per lot, except for an accessory dwelling unit.*

The interests of neighbors are sufficiently protected by all other existing restrictions like setbacks, height limits, etc., as well as the view preservation ordinance specifically tailored to MCE (Chapter 17.43).

It would strike as an inconsistent solution to only allow certain types of ADUs in MCE (restricted to existing pads), while the rest of the City does not have this restriction - unless there are valid reasons for a distinction. Such reasons don't exist.

Thank you for your consideration.

Sincerely,
Helmut Meissner

ATTACHMENT 6

From: K Hill
Sent: Sunday, November 1, 2020 12:42 AM
To: Richard Mollica <rmollica@malibucity.org>
Subject: A thought on ADU's

Hi Richard,

Without knowing exactly what the schedule is regarding consideration of ADU's, I'd like to share a thought in response to what I've heard from people in the community. It seems people want ADU's to be (or not to be) many different things. Here's a way to accommodate a variety of interests.

Last I heard, many months ago, the Planning department was heading towards a recommendation that ADU's be no larger than 900 sq.ft., to harmonize with the City's existing 2nd-unit regs. Many people hear that and think, "OMG, the lots in my neighborhood are so small, I couldn't even fit half that size!" Others think, "Why so small, if the state allows 1,200 sq.ft.?"

So how about your devising a scale, either sliding or stepped, based on parcel size? For example, no ADU on a lot smaller than 1/4 acre; at 1/4 acre you could have an ADU of 400 sq.ft.; then slide or step the scale up, so that by the time you reach 2 acres, you get an ADU of 1,200 sq.ft., the maximum allowed under the state law.

To Coastal Commission you say, "Yes, we're substantially limiting the allowable size of ADU's on much smaller lots, but by going up to 1,200 sq.ft on larger lots, we're making up some of the total ADU square footage, and we're going beyond the 900 sq.ft. we would otherwise be implementing, as per our guest house precedent. And it's more responsive to neighborhood character." Etc. In other words, you might be keeping roughly the same total square footage of ADU you'd have in all of Malibu, yet distribute it in a more dynamic way, more sensitive to the scale and density of neighborhoods.

The scale from 400 to 1,200 sq.ft. could be sliding, based on formula (the way the TDSF curve is). Or you could specifiy it in discrete steps, e.g., 1/4 acre = 400, 3/8 acre =550, 1/2 acre = 600, 5/8 acre= 700, 3/4 acre = 800 1 acre = 900… up to >2 acres = 1,200. Or whatever – I don't mean those to be an exact recommendation, just an illustration. If you did it in discrete steps, you'd want enough steps that the jump from one tier to the next doesn't seem too extreme to the homeowner whose lot size is just under a threshold.

Anyway, it's a generalizable idea. I'd be happy to either take a little credit or heat for it, as the case may be, or not. ;-)

Best,
Kraig
[redacted]

From: K Hill
Sent: Friday, November 20, 2020 6:47 PM
To: Justine Kendall <jkendall@malibucity.org>
Cc: Richard Mollica <rmollica@malibucity.org>
Subject: Notes on ADU's, referencing the new County ordinance

Hi Justine,

Re ADU's, I imagine you've referenced the new County ADU ordinance, but just in case, here it is, attached. I understand that it doesn't apply wherever there's an LCP, such as in Malibu, but presumably it might offer some insights.

Apropos to our discussion of lot sizes (and the possibility of creating a sliding scale for permissible ADU sq.ft, analogous to the TDSF curve), the County ordinance provides a precedent. It notes minimum lot sizes for agricultural, open space and recreational zoning on page 7- 8, and for commercial zoning on page 10-11. (The minimum sizes range from 1 to 100 acres.) Yet the similar table for residential zones on page 9 doesn't note any minimum sizes. (The minimum sizes are listed in numbered "notes" that don't appear to have corresponding numbers in the text – it's confusing.) Nor are there minimum sizes specified for rural and mixed use zones. The point is, there is some precedent for applying a sliding scale, even if it hasn't been applied in every zoning designation.

I had mentioned arbitrarily that maybe the minimum size could be 400 sq. feet. But the County's minimum is 150 sq.ft. so that should be the bottom end of any sliding scale.

Also, Malibu should probably have a minimum lot size – perhaps 1/2 acre. So a curve could go from 150 sq.ft on 1/2 acre, to 900 (or even 1200) sq.ft on 2 acres or more.

Based on a few more conversations with others, I would suggest that you be strict in interpreting and implementing provisions relating to fire safety in particular.

Regarding the requirement of two egresses in "Very High Fire Hazard Severity Zones," the County distinguishes between circumstances where there is or isn't also a "Hillside Management Area" (HMA). (P 15 et seq.) The practical difference is that where there is a HMA the egresses are required to be paved, but where there is no HMA they need not be paved. How might that translate to Malibu's LCP, which doesn't have that same HMA designation? We don't want to encourage more paving, but the Fire Dept will need to sign off.

Heights should be strictly limited, with restrictions imposed evenly and fairly across the whole city. 18 feet should be considered an absolute *maximum*, with lower heights required where, for example, the height of the existing house is lower (ADU should be no taller than existing house), and where neighborhood associations have imposed lower limitations.

The County ordinance specifies side and rear setbacks at 4 ft. (P 26.) That makes little sense. The City's

version should probably say that ADU's must meet the same setbacks required of other structures in the LCP. If you feel somehow obligated to allow smaller setbacks, the Fire Dept requires 5-ft wide walkaround. Then if there are fences, as is often the case, you'd want at least 6 feet from the lot line, to accommodate the walkaround. You'd also want a clause that applies the minimum 10 ft between structures *as across lot lines* to address pre-code nonconforming noncompliant setbacks of less than 5 ft on adjacent lots.

The County doesn't require parking of ADU's under a number of circumstances (P 26-28). Most of them make no sense. Given that, by definition, someone will be sleeping in the ADU, it must there require at least one parking space. Recall that parking is a requirement that planning has underestimated in the past (e.g., for restaurants); let's ensure that all ADU's have sufficient dedicated off-street parking.

The County has a 200 ft. setback from public open space (good), but doesn't specify a setback from ESHA (bad). Definitely include a substantial ESHA setback requirement – unless the standard requirement will pertain automatically.

If anyone at the City is expressing any intent re STU's in ADU's – just no! Note that the County ordinance doesn't allow it, period. (P.21) Nor shall they accommodate "home-based occupations" (businesses)(op cit).

Best,
Kraig

ANALYSIS

This ordinance amends the Los Angeles County Code, Title 22 – Planning and Zoning, to establish new development standards and case processing procedures for accessory dwelling units and junior accessory dwelling units in the unincorporated areas of Los Angeles County.

Very truly yours,

MARY C. WICKHAM
County Counsel

By
STARR COLEMAN
Assistant County Counsel
Property Division

SC:ss

Requested: 04-15-2020

Revised: 09-16-2020

ORDINANCE NO. _____

An ordinance amending the Los Angeles County Code, Title 22 – Planning and Zoning, to establish new development standards and case processing procedures for accessory dwelling units and junior accessory dwelling units in the unincorporated areas of Los Angeles County.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Section 22.14.010 is hereby amended to read as follows:

22.14.010 A.

Accessory building or structure. A detached building or structure that is subordinate and incidental in use to the principal building or use on the same lot, and located in the same or a less restrictive zone.

Accessory dwelling unit and junior accessory dwelling unit. The following terms are defined for the purposes of Section 22.140.160 (Accessory Dwelling Units and Junior Accessory Dwelling Units).

Accessory dwelling unit. A dwelling unit with independent exterior access that is either attached to, located within the existing living area, or detached from and located on the same lot as a single-family ~~residence~~or multi-family residential building, including mixed use development. This term includes a senior citizen residence, a second unit, and an accessory dwelling unit approved prior to May 30, 2019. This term also includes a manufactured home, as defined in ~~S~~section 18007 of the California Health and Safety Code. An accessory dwelling unit is accessory to ~~a single-family residence~~the principal residential use~~;~~ and does not count toward the allowable density

~~for the lot upon which it is located; is a residential use that is consistent with the existing general plan and zoning designation for the lot; and~~ for the purposes of zoning or General Plan consistency. An accessory dwelling unit includes permanent provisions for living, sleeping, eating, cooking, and sanitation.

Junior accessory dwelling unit. A dwelling unit, with independent exterior access, that is no more than 500 square feet in size and contained entirely within the footprint of a single-family residence, including an attached garage. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the single-family residence, as set forth in section 65852.22(h)(1) of the California Government Code, or a successor provision.

Public transit. As defined in section 65852.2(j)(10) of the California Government Code.

...

Affordable housing and senior citizen housing. The following terms are defined for the purposes of Chapter 22.120 (Density Bonus) and Chapter 22.166 (Housing Permits):

Affordable housing cost. As defined in ~~S~~section 50052.5 of the California Health and Safety Code.

Affordable housing set-aside. Dwelling units reserved for extremely low, very low, lower, or moderate income households.

Affordable rent. As defined in ~~S~~section 50053 of the California Health and Safety Code.

Baseline dwelling units. The maximum number of dwelling units permitted by the General Plan land use designation.

Child care facility. As defined in ~~S~~section 65915(h)(4) of the California Government Code.

Common interest development. As defined in ~~S~~section 4100 of the California Civil Code.

Density bonus. See "Density bonus."

Housing development. A development project for five or more dwelling units, including mixed use developments. It may also be a subdivision or a common interest development, as defined in ~~S~~section 4100 of the California Civil Code, approved by the County and consisting of dwelling units or unimproved residential lots. It may also be either a project to substantially rehabilitate and convert an existing commercial building to residential use, or the substantial rehabilitation of an existing multi-family dwelling, as defined in ~~S~~section 65863.4(d) of the California Government Code, where the result of rehabilitation would be a net increase in available dwelling units.

Incentive. As specified in ~~S~~section 65915(k) of the California Government Code, a reduction of a development standard or a modification of a zoning code requirement, or other regulatory incentive or concession, that results in identifiable and actual cost reductions to provide for affordable housing costs or rents.

...

Major transit stop. As defined in ~~S~~section 21155(b) of the California Public Resources Code.

Senior citizen. A person who is 55 years of age or older, pursuant to ~~S~~sections 51.3, 798.76 or 799.5 of the California Civil Code, as applicable.

Senior citizen housing.

Mobilehome park for senior citizens. A mobilehome park that limits residency based on age requirements, pursuant to ~~S~~section 798.76 or 799.5 of the California Civil Code.

Senior citizen housing development. As defined in ~~S~~section 51.3(b) of the California Civil Code.

Special needs housing. As defined in ~~S~~section 51312 of the California Health and Safety Code.

Specific adverse impact. As defined in ~~S~~section 65589.5(d)(2) of the California Government Code.

Waiver or reduction of development standards. As specified in ~~S~~section 65915(e) of the California Government Code, a waiver or reduction of development standards that has the effect of physically precluding the construction of a project at the densities or with the incentives permitted by Chapter 22.120 (Density Bonus).

...

Airport. This term shall have the same meaning as set forth in ~~S~~section 21013 (State Aeronautics Act) of the California Public Utilities Code.

...

SECTION 2. Section 22.14.130 is hereby amended to read as follows:

22.14.130 M.

...

Mills Act Program. The following terms are defined solely for Chapter 22.168 (Los Angeles County Mills Act Program):

Application. An application to enter into an historical property contract.

Historical property contract. A contract between the Director and the owners of a qualified historical property which meets all the requirements of Chapter 22.168 (Los Angeles County Mills Act Program) and ~~S~~sections 50280 through 50290, inclusive, of the California Government Code.

...

Qualified historical property. Property which meets the definition of a "qualified historical property," as set forth in ~~S~~section 50280.1 of the California Government Code and is located within the unincorporated areas of the County. A property located within a federal, State, or County registered historic district is not a "qualified historical property" under Chapter 22.168 (Los Angeles County Mills Act), unless the property is certified by the County, State, or Secretary of Interior as being of historic significance to the relevant historic district.

...

Mobilehome. As defined in ~~S~~section 18008 of the California Health and Safety Code.

Mobilehome park. As defined in Ssection 18214 of the California Health and Safety Code.

Motel. A lodging establishment containing a group of attached or detached buildings containing guest rooms and offering temporary overnight visitor accommodations with a maximum rental period of 30 days. Access to some or all guest rooms is from a walkway open to the outside. This term includes "auto court," "motor lodge," and "tourist court."

Multi-family housing.

...

Townhouse. A single-family dwelling unit sharing a common wall with other single-family dwelling units on one or two sides and capable of being placed on a separate lot. This term includes "row house."

Two-family residence. A building containing two dwelling units, other than a single-family residence with an attached accessory dwelling unit. This term includes "duplex."

SECTION 3. Section 22.14.200 is hereby amended to read as follows:

22.14.200 T.

...

Tasting Rooms and Wineries. The following terms are defined solely for Section 22.140.590 (Tasting Rooms and Remote Tasting Rooms) and Section 22.140.610 (Wineries):

...

Winery facilities. All structures and accessory structures as used by a winery, as defined above, including the paved parking areas required by Section 22.140.610 for mobile bottling or crushing facilities, but excluding any tasting room area or structure.

...

~~Two-family residence. A building containing two dwelling units, other than a single-family residence with an attached accessory dwelling unit. This term includes "duplex."~~

SECTION 4. Section 22.16.030 is hereby amended to read as follows:

22.16.030 Land Use Regulations for Zones A-1, A-2, O-S, R-R, and W.

...

C. Use Regulations.

...

2. Accessory Uses. Table 22.16.030-C, below, identifies the permit or review required to establish each accessory use.

TABLE 22.16.030-C: ACCESSORY USE REGULATIONS FOR AGRICULTURAL, OPEN SPACE, RESORT AND RECREATION, AND WATERSHED ZONES						
	A-1	A-2	O-S	R-R	W	Additional Regulations
...						
Accessory dwelling units [2]	SPR	SPR	-SPR	-SPR	-SPR	Section 22.140.640
...						
Junior accessory dwelling units [2]	SPR	SPR	SPR	SPR	SPR	Section 22.140.640
...						

Notes: ... 2. Use may be subject to a Revised Exhibit "A" (Chapter 22.184) application instead, if the principal residential use is subject to a Conditional Use Permit (Chapter 22.158) application. 3. All buildings and structures on the property used in conjunction with the permitted use shall be located at least 50 feet from any street or highway or any habitable structure. ~~3~~4. Use shall be located at least 300 feet from any public park or any area in a Residential Zone. ~~4~~5. Minimum lot size is one acre. ~~5~~6. Use shall meet all applicable health and safety standards and be reclaimed for open space use when declared safe for such use by the California Department of Health. ~~6~~7. Minimum lot size is 10 acres. ~~7~~8. Limited to hives only. ~~8~~9. Minimum lot size is five acres. ~~9~~10. Use shall be located within 600 feet of, or be in conjunction with, and intended to serve any use listed as permitted for the zone under the Recreational Uses category in Table 22.16.030-B, above. ~~10~~11. Use shall be limited to a seating capacity not to exceed 500 seats. ~~11~~12. Minimum lot size is one acre where sheltered employment or industrial-type training is conducted. ~~12~~13. Use is permitted if publicly owned. ~~13~~14. Minimum lot size is 100 acres. ~~14~~15. Use is allowed in an open space easement if use is consistent with the intent and language of the applicable open space easement. ~~15~~16. Use excludes airports and landing strips. ~~16~~17. Use may also be subject to Chapter 22.120 (Density Bonus) and Chapter 22.166 (Housing Permits), if it includes affordable housing or senior citizen housing.

...

SECTION 5. Section 22.18.030 is hereby amended to read as follows:

22.18.030 Land Use Regulations for Zones R-A, R-1, R-2, R-3, R-4, and R-5.

...

C. Use Regulations.

...

2. Accessory Uses. Table 22.18.030-C, below, identifies the permit or review required to establish each accessory use.

TABLE 22.18.030-C: ACCESSORY USE REGULATIONS FOR RESIDENTIAL ZONES							
	R-A	R-1	R-2	R-3	R-4	R-5	Additional Regulations
...							
Accessory dwelling units	SPR	SPR	SPR	SPR	SPR	-SPR	Section 22.140.640
...							
Junior accessory dwelling units	SPR	SPR	SPR	SPR	SPR	SPR	Section 22.140.640
...							

...

SECTION 6. Section 22.18.060 is hereby amended to read as follows:

22.18.060 Development Standards and Regulations for Zone RPD.

Premises in Zone RPD shall be subject to the following regulations:

A. Use Regulations.

...

2. Conditional Uses. A Conditional Use Permit (Chapter 22.158) application is required if the property in Zone RPD is to be used for a planned residential development, including a mobilehome park, subject to the approval by the Commission or Hearing Officer, which will afford the same or lesser density of population or intensity of use than is specified in the zone, subject to Subsections B through G, below.

3. Accessory Dwelling Units and Junior Accessory Dwelling Units. Accessory dwelling units and junior accessory dwelling units are subject to a Ministerial Site Plan Review (Chapter 22.186) application, or a Revised Exhibit "A" (Chapter 22.184) application, if the principal residential use is subject to a Conditional Use Permit (Chapter 22.158) application, pursuant to Subsection A.2, above.

...

SECTION 7. Section 22.20.030 is hereby amended to read as follows:

22.20.030 Land Use Regulations for Zones C-H, C-1, C-2, C-3, C-M, C-MJ, and C-R.

...

C. Use Regulations.

...

2. Accessory Uses. Table 22.20.030-C, below, identifies the permit or review required to establish each accessory use.

TABLE 22.20.030-C: ACCESSORY USE REGULATIONS FOR COMMERCIAL ZONES

	C-H	C-1	C-2	C-3	C-M	C-MJ	C-R	Additional Regulations
Accessory buildings and structures, unless more specifically regulated by this Title 22	As determined by the principal use							Sections 22.110.030, 22.110.040
Accessory dwelling units [2]	SPR	SPR	SPR	SPR	SPR	SPR	SPR	Section 22.140.640
...	P	P	P	P	P	P	P	
Junior accessory dwelling units [2]	SPR	SPR	SPR	SPR	SPR	SPR	SPR	Section 22.140.640
...								

Notes:

...

2. Use may be subject to a Revised Exhibit "A" (Chapter 22.184) application instead, if the principal residential use is subject to a Conditional Use Permit (Chapter 22.158) application.

3. Minimum lot size is one acre.

~~3~~4. Use shall maintain a commercial appearance by providing office or window display space across any side of the building with street or highway frontage. Office or window display space shall have a minimum depth of 10 feet.

~~4~~5. The use shall comply with the standards in Section 22.20.080 (Development Standards for Zone C-R).

~~5~~6. Minimum lot size is five acres.

~~6~~7. Minimum lot size is one acre where sheltered employment or industrial-type training is conducted.

~~7~~8. The use shall comply with the standards in Section 22.20.060 (Development Standards for Zone C-M), if assembly and manufacturing would be part of industrial-type training.

~~8~~9. Use is permitted if publicly owned.

~~9~~10. Individual crucibles that exceed a capacity of 16 square feet are prohibited.

~~10~~11. Sales shall be limited to retail sales only and all goods sold shall be new.
~~11~~12. Use does not permit a kiln or manufacture.
~~12~~13. Use may permit manufacturing on the premises when accessory to retail sales, provided that total volume of kiln space does not exceed eight cubic feet.
~~13~~14. Use may permit manufacturing on the premises when accessory to retail sales, provided that total volume of kiln space does not exceed 16 cubic feet.
~~14~~15. Use includes related installation and repair if conducted within an enclosed building.
~~15~~16. Use may include the sale of lumber and other building supplies, but shall exclude milling or woodworking other than accessory cutting of lumber to size, provided that all sale, display, storage and accessory cutting is within an enclosed building.
~~16~~17. Use is permitted within an enclosed building only.
~~17~~18. Parking provided is separate from required parking in Chapter 22.112 (Parking), however, use shall be developed in compliance with Chapter 22.112 (Parking).
~~18~~19. When nonconforming in zones where the use is allowed with a Conditional Use Permit (Chapter 22.158).
~~19~~20. Use is permitted only in conjunction with a health club or center.
~~20~~21. Limited to helistops only.
~~21~~22. Use does not permit storage.
~~22~~23. Section 22.140.340 (Manufacturing as an Accessory Use in Commercial Zones) shall apply.
~~23~~24. Use includes merry-go-rounds, ferris wheels, swings, toboggans, slides, rebound-tumbling, and similar equipment operated at one particular location.
~~24~~25. Use includes zip-lines.
~~25~~26. Use may also be subject to Chapter 22.120 (Density Bonus) and Chapter 22.166 (Housing Permits), if it includes affordable housing or senior citizen housing.
~~26~~27. When the use is an affordable housing development (Section 22.120.050), subject to an Administrative Housing Permit (Section 22.166.040).

...

SECTION 8. Section 22.24.030 is hereby amended to read as follows:

22.24.030 Land Use Regulations for Rural Zones.

...

C. Use Regulations.

...

2. Accessory Uses. Table 22.24.030-C, below, identifies the permit or review required to establish each accessory use.

TABLE 22.24.030-C: ACCESSORY USE REGULATIONS FOR RURAL ZONES			
	C-RU	MXD-RU	Additional Regulations
...			
Accessory dwelling units [4]	SPR	-SPR	Section 22.140.640
Home-based occupations	P	P	Section 22.140.290
...			
Junior accessory dwelling units [4]	SPR	SPR	Section 22.140.640
...			
Notes:			
... 4. Use may be subject to a Revised Exhibit "A" (Chapter 22.184) application instead, if the principal residential use is subject to a Conditional Use Permit (Chapter 22.158) application.			

...

SECTION 9. Section 22.26.030 is hereby amended to read as follows:

22.26.030 Mixed Use Development Zone.

...

B. Land Use Regulations.

...

3. Use Regulations.

...

b. Accessory Uses. Table 22.26.030-D, below, identifies the permit or review required to establish each accessory use.

TABLE 22.26.030-D: ACCESSORY USE REGULATIONS FOR ZONE MXD		
		Additional Regulations
Accessory buildings and structures	As determined by the principal use	Sections 22.110.030, 22.110.040
Access to property lawfully used for a purpose not permitted in Zone MXD	SPR	

TABLE 22.26.030-D: ACCESSORY USE REGULATIONS FOR ZONE MXD		
Accessory dwelling units	SPR	Section 22.140.640
...		
Home-based occupations	P	Section 22.140.290
Junior accessory dwelling units	SPR	Section 22.140.640
...		

...

SECTION 10. Section 22.46.030 is hereby amended to read as follows:

22.46.030 Administration.

...

B. Exceptions.

...

3. Accessory Dwelling Units and Junior Accessory Dwelling Units. Where the regulations in Section 22.140.640 (Accessory Dwelling Units and Junior Accessory Dwelling Units) are contrary to the provisions in a Specific Plan regulating the same matter, the provisions in the Specific Plan shall prevail, unless specified otherwise in Section 22.140.640 (Accessory Dwelling Units and Junior Accessory Dwelling Units).

SECTION 11. Section 22.112.070 is hereby amended to read as follows:

22.112.070 Required Parking Spaces.

A. Required Parking Spaces. Table 22.112.070-A, below, identifies the minimum number of parking spaces required to establish each use.

TABLE 22.112.070-A: MINIMUM REQUIRED PARKING SPACES	
Use	**Number of Spaces**
...	
Residential uses [4]	
Accessory dwelling units [10, 11]	1 uncovered standard space per unit.
...	
Apartments [5, ~~10~~]	
Bachelor	1 covered standard space per dwelling unit.
Efficiency and one-bedroom	1.5 covered standard space per dwelling unit.
Junior accessory dwelling units	No spaces required.
...	
Two-family residences	3 covered standard spaces and 1 covered or uncovered standard space per two-family residence.
...	
Single-family residences [10]	2 covered standard spaces per unit.
~~Single-family residences~~	~~2 covered standard spaces per unit.~~
...	
Notes: ... 10. When a garage or carport is converted to an accessory dwelling unit, ~~any parking spaces required for the primary residence may be provided as covered spaces, uncovered spaces, or tandem spaces in compliance with Section 22.04.030.B and Section 22.140.640.H.6.b~~parking spaces for the primary residence shall not be required to be replaced. If parking is provided for the primary residence or residences, it may be provided as covered spaces, uncovered spaces, or tandem spaces, in compliance with Section 22.040.030.B (Use Restrictions) and Section 22.140.640 (Accessory Dwelling Units and Junior Accessory Dwelling Units). 11. See additional ADU parking provisions in Section 22.140.640.~~H.6~~G.1.d (Parking).	

...

SECTION 12. Section 22.140.640 is hereby amended to read as follows:

22.140.640 Accessory Dwelling Units and Junior Accessory Dwelling Units.

A. Purpose. This Section is to provide for the development of accessory dwelling units and junior accessory dwelling units with appropriate development

restrictions, pursuant to sections 65852.2 and 65852.22 of the California Government Code ~~section 65852.2~~.

B. Applicability. This Section ~~shall not apply to the~~applies to accessory dwelling units and junior accessory dwelling units in all zones where permitted, except that in a Coastal Zone, ~~where the~~as defined in Division 2 (Definitions of Title 22), accessory dwelling units and junior accessory dwelling units shall be subject to the regulations set forth in ~~the~~an applicable Local Coastal Program ~~shall control~~.

C. ~~Permitted~~Prohibited Areas. ~~Except as specified in Subsection D, below, an accessory dwelling unit is permitted where single-family residences are permitted with a Ministerial Site Plan Review (Chapter 22.186).~~

1. Accessory dwelling units and junior accessory dwelling units shall be prohibited in the following areas:

a. On lots that are located in the area between Old Topanga Canyon Road, the Coastal Zone boundary, the City of Calabasas, and the City of Los Angeles; and

b. On lots that are located in the Santa Monica Mountains North Area and only have vehicular access from Lobo Canyon Road or Triunfo Canyon Road.

2. Very High Fire Hazard Severity Zone.

a. Where a lot, or any portion thereof, is located within a Very High Fire Hazard Severity Zone, as depicted in the General Plan, and a Hillside Management Area, as depicted in the General Plan, other than those described in

Section 22.104.030.D, an accessory dwelling unit or a junior accessory dwelling unit shall be prohibited on the lot, unless it has two distinct means of vehicular access to a highway that meet the following requirements:

i. The two distinct means of vehicular access, as measured from the lot frontage to the point of intersection with a highway, shall not overlap with each other. For example, see Figure 22.140.640-A, below;

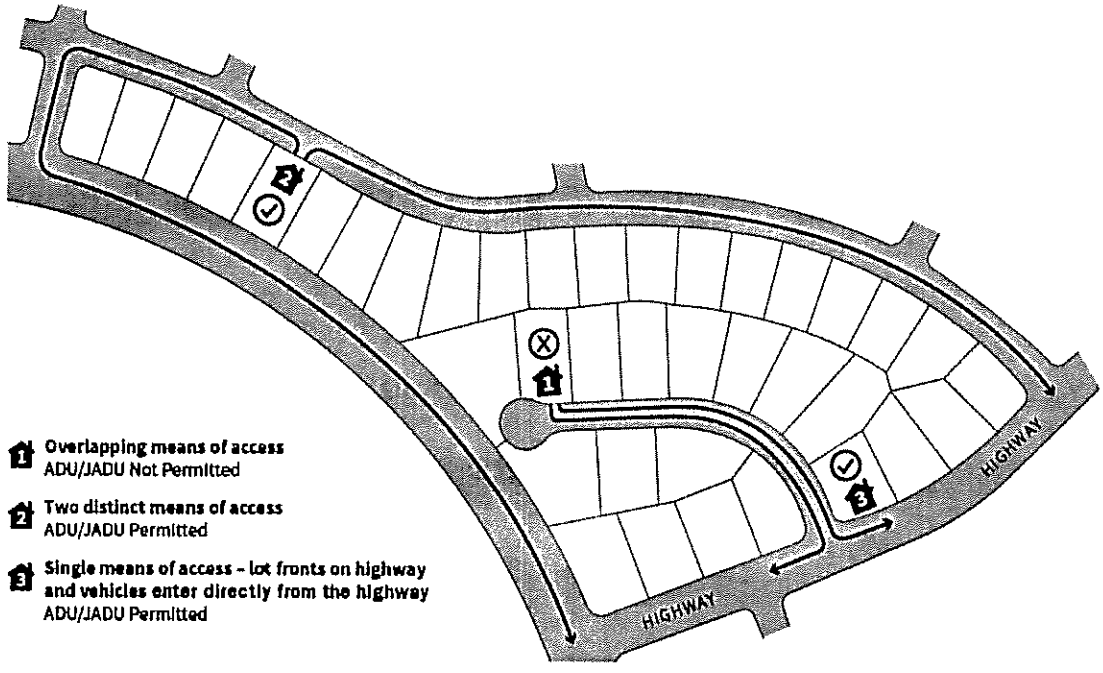
ii. Each distinct means of vehicular access shall contain pavement of at least 24 feet in width, exclusive of sidewalks; and

iii. Each distinct means of access shall be built to public street standards approved by Public Works.

b. Where a lot or any portion thereof is located within a Very High Fire Hazard Severity Zone and is not located within a Hillside Management Area, an accessory dwelling unit or a junior accessory dwelling unit shall be prohibited on the lot, unless it has two distinct means of vehicular access from the lot to a highway that meet the requirements in Subsection C.2.a, above, except that the means of vehicular access may include an unpaved road of at least 24 feet in width maintained by Public Works.

c. Notwithstanding Subsections C.2.a and C.2.b, above, accessory dwelling units and junior accessory dwelling units shall be permitted on lots with a single means of vehicular access, if such lots front a highway and vehicles enter directly from the highway. For example, see Figure 22.140.640-A, below.

FIGURE 22.140.640-A: VEHICULAR ACCESS REQUIREMENTS IN THE VERY HIGH FIRE HAZARD SEVERITY ZONE



~~D. Prohibited Areas. An accessory dwelling unit is not permitted on a lot, if any of the following apply:~~

~~1. The lot is located in a Very High Fire Hazard Severity Zone and contains a Hillside Management Area other than those described in Section 22.104.030.D, and it does not have two means of access to a highway that meet the following requirements:~~

~~a. Both means of access contain at least 24 feet in unobstructed width, as measured from the lot until it reaches the nearest highway; and~~

~~b. Both means of access are built to public street standards approved by Public Works.~~

~~2. The lot is located in a Very High Fire Hazard Severity Zone, and does not contain a Hillside Management Area, and does not have two means of access to a highway that meet both the following requirements:~~

~~a. The required unobstructed width specified in Subsection D.1.a, above; and~~

~~b. Both means of access meet the requirement specified in Subsection D.1.b, above, or are dirt roads maintained by Public Works.~~

~~3. The lot is located in the area between Old Topanga Canyon Road, the Coastal Zone boundary, the City of Calabasas, and the City of Los Angeles;~~

~~4. The lot is located in the Santa Monica Mountains North Area and can only take vehicular access from Lobo Canyon Road or Triunfo Canyon Road.~~

~~E. Application Requirements. An approved Ministerial Site Plan Review (Chapter 22.186) is required to establish an accessory dwelling unit that is located in a permitted area as provided in Subsection C, above.~~

~~F~~D. ~~Timeline for~~Review and Decision. ~~Complete applications for an accessory dwelling unit shall be approved or denied by the Department within 120 days.~~

1. General. A decision on an application for an accessory dwelling unit or a junior accessory dwelling unit shall be made within 60 days of application submittal.

2. If an application for an accessory dwelling unit or a junior accessory dwelling unit is submitted concurrently with a Ministerial Site Plan Review (Chapter 22.186), or a Revised Exhibit "A" (Chapter 22.184) application, for a new single-family residence on the lot, a decision on the application for the accessory dwelling unit or junior accessory dwelling unit may be delayed until a decision on the application for the new single-family residence is made.

3. If the applicant requests a delay in writing, the 60-day time period shall be tolled for the period of the delay.

E. Maximum Number of Accessory Dwelling Units and Junior Accessory Dwelling Units. Table 22.140.640-A, below, identifies the maximum number of accessory dwelling units and junior accessory dwelling units permitted on a lot:

Table 22.140.640-A: MAXIMUM NUMBER OF ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS PERMITTED ON A LOT		
Principal Use on a Lot	*Maximum Number*	
	Accessory Dwelling Units	*Junior Accessory Dwelling Units*
One proposed or existing, legally-built single-family residence in any zone that allows residential use	1	1
Any existing, legally-built housing type other than one single-family residence in any zone that allows residential use	1 or 25 percent of existing dwelling units, whichever is greater, converted from spaces within existing residential building(s); and 2 detached from existing residential building(s)	-

~~G~~F. Use Restrictions. An accessory dwelling unit or a junior accessory dwelling unit shall be subject to all of the following use restrictions:

~~1. An accessory dwelling unit may be developed if the lot:~~

~~a. Contains no habitable structures other than the legally built single-family residence; or~~

~~b. Will only have one new detached primary single-family residence permitted concurrently with the accessory dwelling unit, and no other habitable structures.~~

~~2. No more than one accessory dwelling unit is permitted on any lot.~~

~~3. An accessory dwelling unit shall not be separately sold from the single-family residence on the same lot.~~

~~4. An accessory dwelling unit may only be used as a rental unit for a period of at least 30 consecutive days. The applicant shall record in the Registrar-Recorder/County Clerk, an agreement to this effect as a covenant running with the land for the benefit of the County of Los Angeles, and the covenant shall also declare that any violation thereof shall be subject to the enforcement procedures of Chapter 22.242 (Enforcement Procedures). Recordation of the covenant must occur prior to issuance of a certificate of occupancy by the County.~~

~~5. An accessory dwelling unit shall not be used for a home-based occupation if there is a home-based occupation in the single-family residence.~~

1. Ownership. An accessory dwelling unit or a junior accessory dwelling unit shall not be sold separately from the principal residential building(s) on the same lot.

2. Duration of Tenancy. An accessory dwelling unit or a junior accessory dwelling unit may only be used as a rental unit for a period of at least 30 consecutive days.

3. Home-Based Occupation Prohibited. No home-based occupation shall be conducted within an accessory dwelling unit or a junior accessory dwelling unit.

~~H~~G. Development Standards.

1. ~~Single-Family Residence Standards~~Accessory Dwelling Units. ~~An accessory dwelling unit shall comply with Section 22.140.580 (Single-Family Residences), except Section 22.140.580.B (Minimum Building Width) and Section 22.140.580.C (Minimum Floor Area) shall be superseded by this Subsection H.~~

~~2~~a. Floor Area.

a~~i~~. Minimum. An accessory dwelling unit shall have a minimum floor area of 150 square feet, with one habitable room with a minimum floor area of 70 square feet.

b~~ii~~. Maximum.

~~I.~~(1) General.

(1~~a~~) The maximum floor area of an accessory dwelling unit shall be 1,200 square feet, if the accessory dwelling unit is any of the following:

(a~~i~~) A new detached structure; or

(b~~ii~~) ~~Entirely within an existing, legally-built single-family residence; or~~The result of the conversion of an existing, legally-built

accessory structure with an addition to expand the floor area of said structure by more than 150 square feet.

~~(c) The result of the conversion of an existing, legally-built accessory structure with no expansion of the floor area of said structure.~~

(b) There is no maximum floor area for an accessory dwelling unit, if the accessory dwelling unit is any of the following:

(i) Entirely within an existing, legally-built single family or multi-family residential building; or

(ii) The result of the conversion of an existing, legally built accessory structure, with an expansion of not more than 150 square feet beyond the same physical dimensions of said structure, solely for the purpose of accommodating ingress and egress.

(~~2~~c) For an attached accessory dwelling unit not described in Subsections ~~H.2.b.i.(1)(b)~~G.1.a.ii.(1)(a)(ii) or ~~H.2.b.i.(1)(c)~~G.1.a.ii.(1)(b), above, the total floor area of the attached accessory dwelling unit shall not exceed 50 percent of the habitable area of ~~said~~the single-family residence at the time of application submittal, or 1,200 square feet, whichever is less, provided at least an 800 square foot accessory dwelling unit is allowed.

~~i~~i(2). ~~Exceptions~~Community Standards District and Specific Plans. ~~For an accessory dwelling unit not described in Subsections H.2.b.i.(1)(b) or H.2.b.i.(1)(c), above~~Accessory dwelling units shall not be subject to any

Community Standards District or Specific Plan provision pertaining to floor area, gross structural area, or lot coverage.

~~(1) Hillside Management Areas. The total floor area of the accessory dwelling unit in a Hillside Management Area shall not exceed 50 percent of the habitable area of the single-family residence at the time of application submittal, or 800 square feet, whichever is less.~~

~~(2) Community Standards Districts and Specific Plans. Notwithstanding Subsection H.2.b.ii.(1), above, the accessory dwelling unit shall be subject to all applicable Community Standards District or Specific Plan provisions pertaining to floor area and lot coverage, and in no case shall:~~

~~(a) The total floor area of a new detached accessory dwelling unit exceed the maximum floor area specified in Subsection H.2.b.i.(1), above; and~~

~~(b) The total floor area of an attached accessory dwelling unit exceed the maximum floor area specified in Subsection H.2.b.i.(2), above.~~

~~3~~b. Height.

a~~i~~. ~~General.~~ The maximum height of an accessory dwelling unit on a lot with an existing or proposed single-family residence shall be 25 feet.

~~b~~ii. ~~Exceptions~~The maximum height for detached accessory dwelling units on a lot containing an existing multi-family dwelling structure or structures shall be 16 feet.

iii. ~~The height of an existing structure shall be deemed the~~There is no maximum height ~~of~~for an accessory dwelling unit, if the accessory dwelling unit is any of the following:

(1) Entirely within an existing, legally-built single-family ~~residence~~or multi-family residential building; or

(2) The result of the conversion of an existing, legally built accessory structure with ~~no expansion of the floor area of said structure~~an expansion of not more than 150 square feet beyond the same physical dimensions of said structure, limited to accommodating ingress and egress.

~~ii. For an accessory dwelling unit not described in Subsection H.3.b.i., above:~~

~~(1)~~iv. Community Standards Districts and Specific Plans. Any new accessory dwelling unit, or expanded portion of an existing structure that is part of a proposed accessory dwelling unit, shall not exceed the maximum height specified in a Community Standards District or Specific Plan, or 25 feet, whichever is less, provided that the maximum height allows a minimum 16-foot-high accessory dwelling unit.

~~(2)~~v. Proximity to Scenic Resources. Notwithstanding Subsection ~~H.3.b.ii.(1)~~G.1.b.iv, above, if any new accessory dwelling unit, or expanded

portion of an existing structure that is part of a proposed accessory dwelling unit, is located within 200 feet of an adopted route with scenic qualities, Scenic Route, Scenic Drive, or Scenic Highway, the new accessory dwelling unit or expanded portion shall not exceed the height of the single-family ~~residence~~or multi-family residential building, or 18 feet, whichever is less, provided that the maximum height allows a minimum 16-foot-high accessory dwelling unit.

~~4. Distance from Single-Family Residence. The distance between a detached accessory dwelling unit and the single-family residence shall be as follows:~~

~~a. A minimum of six feet; and,~~

~~b. In Hillside Management Areas, a maximum of 25 feet, unless the accessory dwelling unit is the result of the conversion of an existing, legally-built accessory structure with no expansion of the floor area of the structure.~~

~~5~~c. Required Yards.

a~~i~~. The depth of a yard between the existing structure and an existing lot line shall be deemed the required yard depth, if the accessory dwelling unit is any of the following:

~~i.~~(1) Entirely within an existing, legally-built single-family residence; or

~~ii.~~(2) The result of the conversion of an existing, legally-built accessory structure with no expansion of the floor area of said structure, or constructed in the same location and to the same dimensions as an existing structure.

~~b~~ii. For an accessory dwelling unit not described in Subsection ~~H.5.a~~G.1.d.i, above:

~~i. Any new accessory dwelling unit, or expanded portion of an existing structure that is part of a proposed accessory dwelling unit, shall be at least five feet from the rear, interior side, and corner side lot lines.~~

~~ii.~~(1) Any new accessory dwelling unit, or expanded portion of an existing structure that is part of a proposed accessory dwelling unit, shall be at least four feet from the rear, interior side, and corner side lot lines, notwithstanding any contrary provisions in this Title 22.

~~iii.~~(2) An accessory dwelling unit that is built above a garage shall be at least ~~five~~four feet from the reversed corner side lot line, notwithstanding any contrary provisions in this Title 22.

~~6~~d. Parking.

~~a. Parking for an accessory dwelling unit shall be provided in accordance with Chapter 22.112 (Parking), with the following exceptions:~~

i. No parking shall be required for an accessory dwelling unit that is located outside of a Very High Fire Hazard Severity Zone~~; or~~.

ii. ~~In any of the following instances, pursuant to California Government Code section 65852.2(d):~~Parking for an accessory dwelling unit located within a Very High Fire Hazard Severity Zone shall be provided in accordance with Chapter 22.112 (Parking), unless any of the following exceptions are met, in which case no parking shall be required:

(1) The accessory dwelling unit has no bedroom;

(2) The accessory dwelling unit is detached, with a maximum floor area of 800 square feet and a maximum height of 16 feet, and is located on a lot with a proposed or existing single-family residence;

(3) The accessory dwelling unit is detached, with a maximum height of 16 feet and minimum rear and side yard depths of four feet, and is located on a lot with an existing multi-family residential building;

(4) The accessory dwelling unit is entirely within an existing, legally-built single-family or multi-family residential building;

(5) The accessory dwelling unit is the result of the conversion of an existing, legally built accessory structure with an expansion of not more than 150 square feet beyond the same physical dimensions of said structure, limited to accommodating ingress and egress;

(~~1~~6) The accessory dwelling unit is located within one-half mile walking distance of public transit;

(~~2~~7) The accessory dwelling unit is located within an architecturally and historically significant historic district;

~~(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure;~~

(~~4~~8) When on-street parking permits are required, but not offered to the occupant of the accessory dwelling unit; or

(~~5~~9) When there is a car share vehicle ~~located~~location within one block of the accessory dwelling unit.

iii. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted into an accessory dwelling unit, no replacement parking shall be required for the accessory dwelling unit or single-family or multi-family residential building.

~~b~~iv. ~~Required~~When parking is required for the accessory dwelling unit or single-family ~~residence~~or multi-family residential building, such parking may be located on a driveway, or in an area ~~that is no longer~~previously used as a driveway to a garage or carport~~, due to the conversion of that garage or carport to~~ that has since been demolished in conjunction with the construction of an accessory dwelling unit or converted into an accessory dwelling unit.

~~l~~e. Distance from Publicly Dedicated Open Space. In any Fire Hazard Severity Zone, as defined in Title 32 (Fire Code) of the County Code, an accessory dwelling unit shall be located at least 200 feet from publicly dedicated open space, provided an accessory dwelling unit with side and rear yard setbacks of at least four feet is allowed.

f. Roof and Exterior Siding Materials. An accessory dwelling unit shall comply with Section 22.140.580.D (Roof and Exterior Siding Materials).

2. Junior Accessory Dwelling Units.

a. Floor Area.

i. Maximum. A junior accessory dwelling unit shall not exceed 500 square feet in size and shall contain at least an efficiency kitchen, which includes cooking appliances and a food preparation counter and storage cabinets that are of reasonable size in relation to the junior accessory dwelling unit.

ii. Community Standards Districts and Specific Plans. The junior accessory dwelling unit shall not be subject to any Community Standards District or Specific Plan provision pertaining to floor area, gross structural area, or lot coverage.

b. Separate Entrance. A junior accessory dwelling unit shall have a separate entrance from the single-family residence.

c. Access to Bathroom. Access to a bathroom shall be required, which may be part of the square footage of the junior accessory dwelling unit or located within the existing single-family residence. If the unit's bathroom is provided as part of the single-family residence, the junior accessory dwelling unit shall have interior access to the main living area of the single-family residence.

H. Covenant Requirement for Junior Accessory Dwelling Unit. The owner shall record a covenant in a form prescribed by the County, which shall run with the land for the benefit of the County and provide for the following:

1. A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence;

2. A restriction on the size and attributes of the junior accessory dwelling unit consistent with this Section; and

3. A requirement that either the primary residence or the junior accessory dwelling unit be the owner's bona fide principal residence, unless the owner is a governmental agency, land trust, or housing organization.

I. Owner Occupancy.

1. If a property contains a junior accessory dwelling unit, either the single-family residence or junior accessory dwelling unit shall be the principal residence of at least one legal owner of the lot, as evidenced at the time of approval of the junior accessory dwelling unit by appropriate documents of title and residency, unless the property is owned by a governmental agency, land trust, or housing organization.

~~J~~2. Release of Owner-Occupancy Covenant. The County ~~of Los Angeles~~ releases its interest in any covenant for an accessory dwelling unit that required owner-occupancy in perpetuity of either the single-family residence or the accessory dwelling unit that is located on the same lot, recorded in the Registrar-Recorder/County Clerk, running with the land for the benefit of the County ~~of Los Angeles~~.

J. Community Standards Districts and Specific Plans. Where the regulations in this Section are contrary to the provisions in a Community Standards District or Specific Plan regulating the same matter, the provisions of the Community Standards District or Specific Plan shall prevail, with the following exceptions:

1. Use. Neither Community Standards Districts nor Specific Plans shall prohibit or require a discretionary permit for an accessory dwelling unit or a junior accessory dwelling unit in areas where residential uses are permitted; and

2. Development Standards. As specified otherwise in this Section.

K. Notwithstanding any contrary provision in this Title 22, the approval of an accessory dwelling unit or a junior accessory dwelling unit shall not be subject to the correction of any nonconforming zoning condition, including buildings or structures nonconforming due to standards or use, as defined in Section 22.14.020 of Division 2 (Definition), provided that the lot is in a zone that allowed residential use.

L. To the extent that any provision of this Title 22 is in conflict with law sections 65852.2 or 65852.22 of the California Government Code, the applicable provision of State law shall control, but all other provisions of this Title 22 shall remain in full force and effect.

SECTION 13. Section 22.172.050 is hereby amended to read as follows:

22.172.050 Termination Conditions and Time Limits.

...

C. Exception. The termination periods enumerated in this Section shall not apply to one-family and two-family dwellings, ~~or to~~ accessory dwelling units, or junior accessory dwelling units.

SECTION 14 Section 22.300.020 is hereby amended to read as follows:

22.300.020 Application of Community Standards Districts to Property.

...

B. Additional Regulations.

...

2. Accessory Dwelling Units and Junior Accessory Dwelling Units. ~~CSD regulations shall apply to accessory dwelling units as follows:~~Where the regulations in Section 22.140.640 (Accessory Dwelling Units and Junior Accessory Dwelling Units) are contrary to the provisions in a CSD regulating the same matter, the provisions in the CSD shall prevail, unless specified otherwise in Section 22.140.640 (Accessory Dwelling Units and Junior Accessory Dwelling Units).

~~a. CSD regulations shall only apply to accessory dwelling units not described in Section 22.140.640.H.2.b.i.(1)(b) and 22.140.640.H.2.b.i.(1)(c); and~~

~~b. Where the regulations in Section 22.140.640 (Accessory Dwelling Units) are contrary to the provisions in a CSD regulating the same matter, the provisions in Section 22.140.640 shall prevail, except for Section 22.140.640.H.2 (Floor Area) and Section 22.140.640.H.3 (Height).~~

[2214010SCCC]

Tyler Eaton

From: Tyler Eaton
Sent: Monday, January 3, 2022 7:59 AM
To: Cindy Martin
Cc: Scott Hoeft
Subject: RE: Proposed ADU Ordinance - Points & Authorities - Planning Dept. and City Attorney

Hey Cindy,

Thanks for sending these. After reading through the Coastal Commission memo, it seems what staff will be proposing is consistent with the guidelines. It generally states that a development "may" be exempt from the typical LCP standards if an exemption or waiver can be applied.

It also expressly states that "If a proposed ADU constitutes development, is not exempt, and is not subject to a waiver or similar expedited Coastal Act approval authorized in the certified LCP, it requires a CDP. The CDP must be consistent with the requirements of the certified LCP and, where applicable, the public access and recreation policies of the Coastal Act."

Staff is proposing a regular CDP process and an exemption or ministerial process consistent with these guidelines. If you can point out where in the letter it states that the LCP is only applied when there is an "identifiable impact to a coastal resource", I can examine and forward to the attorney as appropriate.

Thank you.

Tyler Eaton
Assistant Planner | City of Malibu
23825 Stuart Ranch Road, Malibu CA, 90265
Office: 310-456-2489 Ext. 273
Cell: 424-422-8365
Email: teaton@malibucity.org

From: Cindy Martin [redacted]
Sent: Thursday, December 30, 2021 11:48 AM
To: Tyler Eaton <teaton@malibucity.org>
Cc: Cindy Martin [redacted]; Scott Hoeft [redacted]
Subject: FW: Proposed ADU Ordinance - Points & Authorities - Planning Dept. and City Attorney
Importance: High

Hi Tyler,

I am resending the email below with a delivery receipt because of the attachments. Please also confirm receipt and please forward the email below along with the attachments to the City Attorney.

Thanks again and have a happy New Year!

Sincerely,

Cynthia Martin, JD I Special Projects Manager **I Schmitz & Associates, Inc.**
[redacted]

From: Cindy Martin [redacted]
Sent: Thursday, December 30, 2021 10:42 AM
To: Tyler Eaton <teaton@malibucity.org>
Cc: Scott Hoeft [redacted]; Cindy Martin [redacted]
Subject: RE: Proposed ADU Ordinance - Points & Authorities - Planning Dept. and City Attorney
Importance: High

Hi Tyler and City Attorney,

I hope this day finds you well.

Below and attached are the concerns regarding the proposed ADU Ordinance related to building yard setbacks being inconsistent with Coastal Commission directives and State Guidelines. We are also requesting clarification in the proposed ADU Ordinance regarding ADUs attached to accessory structures.

Four Foot Side and Rear Yard Setback – We believe the City is inconsistent with Coastal Commission directives and State Guidelines in proposing regular building yard setbacks to all ADUs requiring a CDP. Based on our attached points and authorities, and the policy articulated in the attached Coastal Commission Memorandum of April 2020, regular side and rear setbacks should only be applied when there are identifiable impacts to a coastal resource.

We are bringing this to your attention now so that if the City Attorney agrees then the proposed ordinance can be revised prior to the Staff Report going out to prevent potentially having to subsequently modify the proposed ordinance again.

Please review the attached correspondence and Coastal Commission memo, and please have the City attorney also review it.

Accessory Dwelling Unit attached to an Accessory Structure – Based on the email chain below, along with your conferring with the City attorney, it was confirmed that the proposed ADU Ordinance will allow an ADU to be attached to an accessory structure whether using existing space or adding to it, provided there is a dividing wall and separate entrance, and assuming all other development standards are met such as TDSF, etc.

However, the proposed definitions for attached and detached accessory dwelling units does not specifically state that ADUs may be attached to an accessory structure. Moreover, the proposed ordinance does not specifically contain language allowing ADUs attached to accessory structures.

To clear up any confusion regarding the permissibility of ADUs attached to accessory structures, we recommend the following language be added to the definition of detached accessory dwelling unit, below in red font.

> ACCESSORY DWELLING UNIT, ATTACHED - an accessory dwelling unit that is structurally attached to the primary dwelling unit by a shared wall or as an additional story above the primary dwelling unit, but which has independent, direct access from the exterior.

ACCESSORY DWELLING UNIT, DETACHED - an accessory dwelling unit that is not structurally attached to the primary dwelling unit, including an accessory dwelling unit that is structurally attached to an accessory structure by a shared wall or as an additional story above the accessory structure, but which has independent, direct access from the exterior.

We believe the foregoing added language with clear up any potential confusion regarding the permissibility of ADUs attached to accessory structures, assuming all other development standards are met, i.e. TDSF, etc.

Thank you for your time and consideration of these important issues.

Sincerely,

Cynthia Martin, JD I Special Projects Manager **I Schmitz & Associates, Inc.**
[redacted]

From: Tyler Eaton <teaton@malibucity.org>
Sent: Thursday, December 23, 2021 8:23 AM
To: Cindy Martin [redacted]
Cc: Scott Hoeft [redacted]
Subject: RE: Proposed ADU Ordinance

Hey Cindy,

Yes, the new ordinance will allow an ADU to be attached to an accessory structure whether using existing space or adding on to it.

I am available Monday or Tuesday after 3pm next week.

From: Cindy Martin [redacted]
Sent: Wednesday, December 22, 2021 6:17 PM
To: Tyler Eaton <teaton@malibucity.org>
Cc: Scott Hoeft [redacted]; Cindy Martin [redacted]
Subject: RE: Proposed ADU Ordinance

Hi Tyler,

Thank you for getting back to me. It is appreciated.

For clarification, you are confirming that the proposed ordinance to be presented to the Planning Commission on January 18, 2022 will contain specific language allowing ADUs attached to accessory structures and ADUs located partially within accessory structures with the ADU having an expanded footprint beyond the accessory structure (the two scenarios I mentioned in my email at the bottom of this email chain), as long as the applicable development standards are being met.

I understand the draft ordinance is subject to change through the public hearing process, so I am only seeking clarification of what will be presented in the written proposed ordinance.

On a completely different matter, will you be available next week for a phone call or meeting on another ADU ordinance issue as well?

Sincerely,

Cynthia Martin, JD I Special Projects Manager **I Schmitz & Associates, Inc.**
[redacted]

From: Tyler Eaton <teaton@malibucity.org>
Sent: Wednesday, December 22, 2021 5:09 PM
To: Cindy Martin [redacted]
Cc: Scott Hoeft [redacted]
Subject: RE: Proposed ADU Ordinance

Hello Cindy,

As it will be proposed to the Planning Commission on January 18, 2022, there will be opportunities to create an ADU within or attached to an accessory structure. The two scenarios you mentioned are both possible as long as the applicable development standards are being met. Again, this is a draft ordinance that is subject to change through the public hearing process.

I can answer any questions you have so feel free to call me whenever or we can set up a meeting if necessary. I will just be answering questions or concerns regarding the ordinance. If you have suggestions, then you should submit them as public comment so that the public and Planning Commission have a chance to weigh in. You can submit those suggestions to me personally through email.

Thank you,
Tyler

From: Cindy Martin [redacted]
Sent: Friday, December 17, 2021 2:10 PM
To: Tyler Eaton [redacted]
Cc: Scott Hoeft [redacted]; Cindy Martin [redacted]
Subject: RE: Proposed ADU Ordinance

Hi Tyler,

I am following up on the email below. Have you heard back from the City Attorney? If not, do you have an ETA when you expect a response.

On another note, Don Schmitz and I would like to set up as meeting or phone call with you and Joyce Parker-Bozylinski to discuss the proposed ADU Ordinance, prior to the staff report going out, regarding some of our research which is too complex for emails. What is the best way to set that up?

Sincerely,

Cynthia Martin, JD I Special Projects Manager **I Schmitz & Associates, Inc.**

[redacted]

From: Tyler Eaton <teaton@malibucity.org>
Sent: Tuesday, November 30, 2021 4:46 PM
To: Cindy Martin [redacted]
Subject: RE: Proposed ADU Ordinance

Hey Cindy,

Both option 1 and 2 are similar and are not directly addressed by the ordinance. If option 1 is allowed then so will option 2. I have taken the question up with our City Attorney for clarification. Once I have a response I will get back to you.

Thanks,
Tyler

From: Cindy Martin [redacted]
Sent: Tuesday, November 30, 2021 3:31 PM
To: Tyler Eaton <teaton@malibucity.org>
Cc: Cindy Martin [redacted]
Subject: RE: Proposed ADU Ordinance

Hello Tyler and thank you for your quick response. Please see my follow-up questions in blue.

Sincerely,

Cynthia Martin, JD I Special Projects Manager I **Schmitz & Associates, Inc.**
28230 Agoura Rd. Suite 200 Agoura Hills, CA 91301
[redacted]

From: Tyler Eaton <teaton@malibucity.org>
Sent: Tuesday, November 30, 2021 3:13 PM
To: Cindy Martin [redacted]
Subject: RE: Proposed ADU Ordinance

Hey Cindy,

See my answers below in red.

From: Cindy Martin [redacted]
Sent: Monday, November 29, 2021 7:06 PM
To: Tyler Eaton <teaton@malibucity.org>

Cc: Cindy Martin [redacted]
Subject: Proposed ADU Ordinance

Hi Tyler,

I have a few questions about the proposed ADU ordinance:

1. In the proposed ordinance, is it permissible to entitle an ADU that is attached to an accessory structure such as an art studio, gym or storage facility, with a shared dividing wall and independent separate entrance? This is of course assuming all other development standards are met, i.e., TDSF, etc. If so, please provide where that provision can be found in the proposed ordinance. If it is not permissible, why is that the case? This is not directly addressed in the proposed ordinance but could theoretically be allowed as long as we don't include any language that prohibits it. I'm referring to the idea of adding an addition to the existing structure and calling the addition and ADU with no internal access and a separate external access. That is correct. The idea is to add an addition with a kitchen to an existing non-residential art studio, gym or storage facility, call the addition an ADU, with no internal access to the accessory structure and a separate external access. My understanding is that this is already allowed so long as other development standards are met, i.e., TDSF, etc. Please confirm if my understanding is correct. Please also confirm whether there is any plan to include language in the proposed ADU Ordinance that prohibits this.

2. Similarly to the above question, is it permissible to entitle an ADU to be located partially within an existing accessory structure such as an art studio, gym or storage facility and expanding beyond the original footprint, with a shared dividing wall and independent separate entrance? This is of also assuming all other development standards are met, i.e., TDSF, etc. If so, please provide where that provision can be found. If it is not permissible, why is that the case? If you are converting existing space within a structure, this is allowed under the proposed ordinance. You would just have to meet all the development standards as you mentioned. The idea is to convert a portion of existing space within the existing accessory structure and then expanding the footprint beyond the existing structure with a dividing wall within the existing accessory space where the ADU would begin. The result being a reduction to the existing accessory structure sf, with an ADU that expands the existing structure with no internal access and a separate external access. For instance, taking a 1,000 sf existing accessory structure, using 200 sf of that structure and adding another 700 sf with the result being a 800 sf accessory structure and a 900 sf ADU. Is this permissible under the proposed ADU Ordinance, assuming all other development standards are met?

Thank you!

Sincerely,

Cynthia Martin, JD I Special Projects Manager **I Schmitz & Associates, Inc.**
[redacted]

Via: Email
December 30, 2021

City of Malibu Planning Department and City Attorney
Attn: Tyler Eaton and City Attorney
23825 Stuart Ranch Rd.
Malibu, CA 90265

Hearing Date: January 18, 2021, Planning Commission Resolution No. 21-45

Re: Proposed ADU Ordinance - Amendments to the LCP and MMC Title 17 Pertaining to Accessory Dwelling Units (ADU) - Side and Rear Yard Setbacks for ADUs.

Dear Tyler and City Attorney,

INTRODUCTION - FOUR-FOOT BUILDING SIDE AND REAR YARD SETBACKS FOR ADUs.

State ADU laws require no more than a four-foot building side or rear yard setback for accessory dwelling units (ADUs), and in many cases, no setback at all. Specifically, the Government Code states:

> No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure (emphasis added)." Gov't Code § 65852.2(a)(1)(D)(viii)

The City of Malibu's Proposed ADU Ordinance complies with the provision requiring no more than a four-foot building side or rear yard setbacks for ADUs, only when a CDP is not required. If a CDP is required, the City's proposed ADU Ordinance requires regular yard setbacks.

The basis for the City's divergence from State ADU law is that State mandates do not supersede the provisions of the Coastal Act. However, as recognized by the City, "Malibu faces the challenge of balancing the requirements of ADU law with requirements of the Coastal Act."[1]

The California Coastal Commission provides instruction on finding the balance between ADU laws and Coastal Act policies in its Memorandum of April 20, 2020, "Implementation of New ADU Laws" (CCC Memo). In the CCC Memo, Executive Director Jack Ainsworth instructs local governments to comply with State ADU law unless there is an identifiable impact to a coastal resource.[2]

As set forth more fully below, the City of Malibu's Proposed ADU Ordinance, and related proposed LCP amendments, should require no more than four-foot side and rear yard setbacks for ADUs when there are no identifiable impacts to coastal resources.

I. THE CITY'S PROPOSED ADU ORDINANCE, AND RELATED LCP AMENDMENTS, SHOULD REQUIRE NO MORE THAN FOUR-FOOT SIDE AND REAR YARD SETBACK, EVEN WHEN A CDP IS REQUIRED, IF THERE ARE NO IDENTIFIABLE IMPACTS TO COASTAL RESOURCEs.

As previously stated, the City of Malibu is tasked with balancing the mandates of State ADU law with the Coastal

[1] City of Malibu, Planning Department, Proposed ADU Ordinance Staff Report, dated May 12, 2021, page 2.

[2] Local Governments should "identify the coastal resource context applicable in a local jurisdiction and ensure that any proposed ADU-related LCP amendment appropriately addresses protection of coastal resources consistent with the Coastal Act." CCC Memo at pg 3.

Act.

However, the Coastal Act does not exempt local governments from complying with state and federal law "with respect to providing low-and-moderate-income housing, replacement housing, relocation benefits, or any other obligation related to housing imposed by existing law or any other law hereafter enacted."[3]

This was specifically addressed by Executive Director Ainsworth in the CCC Memo, wherein he stated:

- The Coastal Act requires the Coastal Commission to encourage housing opportunities for low-and moderate-income households.[4]
- New residential development must be "located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it" or in other areas where development will not have significant adverse effects on coastal resources.[5]
- The creation of new ADUs in existing residential areas is a promising strategy for increasing the supply of lower-cost housing in the coastal zone in a way that may be able to avoid significant adverse impacts on coastal resources (emphasis added).[6]

The proposed City of Malibu ADU Ordinance requires standard yard setbacks for ADUs in all instances when a CDP is required; "If the ADU is not exempt from a CDP then standard setbacks apply."[7] However, requiring more than a four-foot side or rear yard setback for ADUs, without additionally requiring an identifiable impact to a coastal resource, is in direct conflict with the mandates of the Coastal Act as well as State ADU laws.

It is also inconsistent with the directives articulated by Executive Director Ainsworth in the CCC Memo, which state, "[W]hen LCP polices directly conflict with State ADU laws, the LCP should be updated to the greatest extent feasible while still complying with Coastal Act requirements."[8]

In the CCC Memo, Executive Director Ainsworth also instructs that the specific impact to a coastal resource should be identified in order for an LCP policy to deviate from State ADU laws.[9] He then provides examples of impacts to coastal resources, which include:

- Direct impacts to public access.[10]
- ADUs which require a shoreline protective device.[11]
- Development in wetlands or ESHA.[12]
- Where structural integrity of an ADU is compromised by bluff erosion, flooding or wave uprush.[13]

Locating an ADU within four feet of a side or rear property line does not, in and of itself, impact coastal resources. Thus, requiring standard side and rear building yard setbacks, in all cases where a CDP is required, without requiring an identifiable impact to a coastal resource, is inconsistent with the standards put forth in the CCC Memo and does not balance State ADU laws with the Coastal Act.

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[3] CCC Memo at pg 1, citing Pub. Res. Code § 30007.
[4] CCC Memo at pg 1, citing Pub. Res. Code § 30604(f).
[5] CCC Memo at pg 1, citing Pub. Res. Code § 30250.
[6] CCC Memo at pg 1.
[7] See Page 8 of the May 20, 2021 staff report related to ADUs. "If the ADU is not exempt from a CDP then standard setbacks apply."
[8] "Where LCP policies directly conflict with the new provisions or require refinement to be consistent with the new laws, those LCPs should be updated to be consistent with the new ADU provisions to the greatest extent feasible, while still complying with Coastal Act requirements." CCC Memo at pg 3.
[9] CCC Memo at page 3.
[10] CCC Memo at page 3
[11] CCC Memo at page 3
[12] CCC Memo at page 3
[13] CCC Memo at page 3.

The City's proposed ADU Ordinance should include provisions requiring no more than a four-foot side or rear yard setback for ADUs, even when a CDP is required, when there are no identifiable impacts to a coastal resource.

II. REPORTING TO ATTORNEY GENERAL'S OFFICE

In the CCC Memo, Executive Director Ainsworth recognizes that the California Department of Housing and Community Development ("HCD") now has an oversight and approval role to ensure that local ADU Ordinances are consistent with State law, similarly to the Coastal Commissions review of LCP's.[14] If a local government adopts an ordinance that HCD deems to be noncompliant with State law, the HCD has the authority to notify the Office of the Attorney General.[15] Veering from State ADU law, by requiring regular yard setbacks when there are no identifiable impacts to a coastal resource, could result in the HSD notifying the Attorney General's office.

CONCLUSION

Based on the foregoing, the City of Malibu's Proposed ADU Ordinance and related LCP amendments should require no more than a four-foot side or rear setback for ADUs when there are no identifiable impacts to a coastal resource. This is consistent with State ADU law, the Coastal Act, and the CCC Memo as articulated by Executive Director Jack Ainsworth.

Respectfully submitted,

Cynthia Martin, JD,
Special Projects Manager
[redacted]

[14] CCC Memo at page 2.
[15] Gov. Code § 65852.2(h), CCC Memo at page 2.

CALIFORNIA COASTAL COMMISSION
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SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400

To: Planning Directors of Coastal Cities and Counties

From: John Ainsworth, Executive Director

Re: Implementation of New ADU Laws

Date: April 21, 2020

The Coastal Commission has previously circulated two memos to help local governments understand how to carry out their Coastal Act obligations while also implementing state requirements regarding the regulation of accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs"). As of January 1, 2020, AB 68, AB 587, AB 670, AB 881, and SB 13 each changed requirements on how local governments can and cannot regulate ADUs and JADUs, with the goal of increasing statewide availability of smaller, more affordable housing units. This memo is meant to describe the changes that went into effect on January 1, 2020, and to provide guidance on how to harmonize these new requirements with Local Coastal Program ("LCP") and Coastal Act policies.

Coastal Commission Authority Over Housing in the Coastal Zone

The Coastal Act does not exempt local governments from complying with state and federal law "with respect to providing low- and moderate-income housing, replacement housing, relocation benefits, or any other obligation related to housing imposed by existing law or any other law hereafter enacted." (Pub. Res. Code § 30007.) The Coastal Act requires the Coastal Commission to encourage housing opportunities for low- and moderate-income households. (Pub. Res. Code § 30604(f).) New residential development must be "located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it" or in other areas where development will not have significant adverse effects on coastal resources. (Pub. Res. Code § 30250.) The creation of new ADUs in existing residential areas is a promising strategy for increasing the supply of lower-cost housing in the coastal zone in a way that may be able to avoid significant adverse impacts on coastal resources.

This memorandum is intended to provide general guidance for local governments with fully certified LCPs. The Coastal Commission is generally responsible for Coastal Act review of ADUs in areas that are not subject to fully certified LCPs. Local governments that have questions about specific circumstances not addressed in this memorandum should contact the appropriate district office of the Commission.

Overview of New Legislation[1]

The new legislation effective January 1, 2020 updates existing Government Code Sections 65852.2 and 65852.22 concerning local government procedures for review and approval of ADUs and JADUs. As before, local governments have the discretion to adopt an ADU ordinance that is consistent with state requirements. (Gov. Code § 65852.2(a).) AB 881 (Bloom) made numerous significant changes to Government Code section 65852.2. In their ADU ordinances, local governments may still include specific requirements addressing issues such as design guidelines and protection of historic structures. However, per the recent state law changes, a local ordinance may not require a minimum lot size, owner occupancy of an ADU, fire sprinklers if such sprinklers are not required in the primary dwelling, or replacement offstreet parking for carports or garages demolished to construct ADUs. In addition, a local government may not establish a maximum size for an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom. (Gov. Code § 65852.2(c)(2)(B).) Section 65852.2(a) lists additional mandates for local governments that choose to adopt an ADU ordinance, all of which set the "maximum standards that local agencies shall use to evaluate a proposed [ADU] on a lot that includes a proposed or existing single-family dwelling." (Gov. Code § 65852.2(a)(6).)

Some local governments have already adopted ADU ordinances. Existing or new ADU ordinances that do *not* meet the requirements of the new legislation are null and void, and will be substituted with the provisions of Section 65852.2(a) until the local government comes into compliance with a new ordinance. (Gov. Code § 65852.2(a)(4).) However, as described below, existing ADU provisions contained in certified LCPs are not superseded by Government Code section 65852.2 and continue to apply to CDP applications for ADUs until an LCP amendment is adopted. One major change to Section 65852.2 is that the California Department of Housing and Community Development ("HCD") now has an oversight and approval role to ensure that local ADU ordinances are consistent with state law, similar to the Commission's review of LCPs. If a local government adopts an ordinance that HCD deems to be non-compliant with state law, HCD can notify the Office of the Attorney General. (Gov. Code § 65852.2(h).)

If a local government does *not* adopt an ADU ordinance, state requirements will apply directly. (Gov. Code § 65852.2(b)–(e).) Section 65852.2 subdivisions (b) and (c) require that local agencies shall ministerially approve or disapprove applications for permits to create ADUs. Subdivision (e) requires ministerial approval, whether or not a local government has adopted an ADU ordinance, of applications for building permits of the following types of ADUs and JADUs in residential or mixed use zones:

- One ADU or JADU per lot *within* a proposed or existing single-family dwelling or existing space of a single-family dwelling or accessory structure, including an expansion of up to 150 square feet beyond the existing dimensions of an existing accessory structure; with exterior access from the proposed or existing single-family

[1] This Guidance Memo only provides a partial overview of new legislation related to ADUs. The Coastal Commission does not interpret or implement these new laws.

dwelling; side and rear setbacks sufficient for fire and safety; and, if a JADU, applicant must comply with requirements of Section 65852.22; (§ 65852.2(e)(1)(A)(i)-(iv))
- One detached, new construction ADU, which may be combined with a JADU, so long as the ADU does not exceed four-foot side and rear yard setbacks for the single family residential lot; (§ 65852.2(e)(1)(B))
- Multiple ADUs within the portions of existing multifamily dwelling structures that are not currently used as dwelling spaces; (§ 65852.2(e)(1)(C))
- No more than two detached ADUs on a lot that has an existing multifamily dwelling, subject to a 16-foot height limitation and four-foot rear yard and side setbacks. (§ 65852.2(e)(1)(D))

ADUs and JADUs created pursuant to Subdivision (e) must be rented for terms greater than 30 days. (Gov. Code § 65852.2(e)(4).)

What Should Local Governments in the Coastal Zone Do?

1) Update Local Coastal Programs (LCPs)

Local governments are required to comply with both these new requirements for ADUs/JADUs and the Coastal Act. Currently certified provisions of LCPs are not, however, superseded by Government Code section 65852.2, and continue to apply to CDP applications for ADUs until an LCP amendment is adopted. Where LCP policies directly conflict with the new provisions or require refinement to be consistent with the new laws, those LCPs should be updated to be consistent with the new ADU provisions to the greatest extent feasible, while still complying with Coastal Act requirements.

As noted above, Section 65852.2 expressly allows local governments to adopt local ordinances that include criteria and standards to address a wide variety of concerns, including potential impacts to coastal resources. For example, a local government may address reductions in parking requirements that would have a direct impact on public access. As a result, we encourage local governments to identify the coastal resource context applicable in a local jurisdiction and ensure that any proposed ADU-related LCP amendment appropriately addresses protection of coastal resources consistent with the Coastal Act at the same time that it facilitates ADUs/JADUs consistent with the new ADU provisions. For example, LCPs should ensure that new ADUs are not constructed in locations where they would require the construction of shoreline protective devices, in environmentally sensitive habitat areas, wetlands, or in areas where the ADU's structural stability may be compromised by bluff erosion, flooding, or wave uprush over their lifetime. Our staff is available to assist in the efforts to amend LCPs.

Please note that LCP amendments that involve purely procedural changes, that do not propose changes in land use, and/or that would have no impacts on coastal resources may be eligible for streamlined review as minor or de minimis amendments. (Pub. Res. Code § 30514(d); Cal. Code Regs., tit. 14, § 13554.) The Commission will process ADU-specific LCP amendments as minor or de minimis amendments whenever possible.

2) Follow This Basic Guide When Reviewing ADU or JADU Applications

a. Check Prior CDP History for the Site.

Determine whether a CDP was previously issued for development of the lot and whether that CDP limits, or requires a CDP or CDP amendment for, changes to the approved development or for future development or uses of the site. The applicant should contact the appropriate Coastal Commission district office if a Commission-issued CDP limits the applicant's ability to apply for an ADU or JADU.

b. Determine Whether the Proposed ADU or JADU Qualifies as Development.

Any person "wishing to perform or undertake any development in the coastal zone" shall obtain a CDP. (Pub. Res. Code § 30600.) Development as defined in the Coastal Act includes not only "the placement or erection of any solid material or structure" on land, but also "change in the density or intensity of use of land[.]" (Pub. Res. Code § 30106.) Government Code section 65852.2 states that an ADU that conforms to subdivision (a) "shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot." (Gov. Code § 65852.2(a)(8).)

Conversion of an existing legally established room(s) to create a JADU or ADU within an existing residence, without removal or replacement of major structural components (i.e. roofs, exterior walls, foundations, etc.) and that do not change the size or the intensity of use of the structure may not qualify as development within the meaning of the Coastal Act, or may qualify as development that is either exempt from coastal permit requirements and/or eligible for streamlined processing (Pub. Res. Code §§30106 and 30610), see also below. JADUs created within existing primary dwelling structures that comply with Government Code Sections 65852.2(e) and 65852.22 typically will fall into one of these categories, unless specified otherwise in a previously issued CDP or other coastal authorization for existing development on the lot. However, the conversion of detached structures associated with a primary residence to an ADU or JADU may involve a change in the size or intensity of use that would qualify as development under the Coastal Act and require a coastal development permit, unless determined to be exempt or appropriate for waiver.

c. If the Proposed ADU Qualifies as Development, Determine Whether It Is Exempt.

Improvements such as additions to existing single-family dwellings are generally exempt from Coastal Act permitting requirements except when they involve a risk of adverse environmental effects as specified in the Commission's regulations. (Pub. Res. Code § 30610(a); Cal. Code Regs., tit. 14, § 13250.) Improvements that qualify as exempt development under the Coastal Act and its implementing regulations do not require a CDP from the Commission or a local government unless required pursuant to a previously issued CDP. (Cal. Code Regs., tit. 14, § 13250(b)(6).)

Typically, the construction or conversion of an ADU/JADU contained within or directly attached to an existing single-family residence would qualify as an exempt improvement to a single-family residence. (Cal. Code Regs., tit. 14, § 13250(a)(1).) Guest houses and "self-contained residential units," i.e. detached residential units, do not qualify as part of a single-family residential structure, and construction of or improvements to them are therefore not exempt development. (Cal. Code Regs., tit. 14, § 13250(a)(2).)

d. <u>If the Proposed ADU is Not Exempt from CDP Requirements, Determine Whether a CDP Waiver Is Appropriate.</u>

If the LCP includes a waiver provision, and the proposed ADU or JADU meets the criteria for a CDP waiver the local government may waive the permit requirement for the proposed ADU or JADU. The Commission generally has allowed a waiver for proposed *detached* ADUs if the executive director determines that the proposed ADU is de minimis development, involving no potential for any adverse effects on coastal resources and is consistent with Chapter 3 policies. (*See* Pub. Res. Code § 30624.7.)

Some LCPs do not allow for waivers, but may allow similar expedited approval procedures. Those other expedited approval procedures may apply. If an LCP does not include provisions regarding CDP waivers or other similar expedited approvals, the local government may submit an LCP amendment to authorize those procedures.

e. <u>If a Waiver Would Not Be Appropriate, Review CDP Application for Consistency with Certified LCP Requirements.</u>

If a proposed ADU constitutes development, is not exempt, and is not subject to a waiver or similar expedited Coastal Act approval authorized in the certified LCP, it requires a CDP. The CDP must be consistent with the requirements of the certified LCP and, where applicable, the public access and recreation policies of the Coastal Act. The local government then must provide the required public notice for any CDP applications for ADUs and process the application pursuant to LCP requirements, but should process it within the time limits contained in the ADU law if feasible. Once the local government has issued a decision, it must send the required final local action notice to the appropriate district office of the Commission. If the ADU qualifies as appealable development, a local government action to approve a CDP for the ADU may be appealed to the Coastal Commission. (Pub. Res. Code § 30603.)

<u>Information on AB 68, AB 587, AB 670, and SB 13</u>

<u>JADUs – AB 68 (Ting)</u>

JADUs are units of 500 square feet or less, contained entirely within a single-family residence or existing accessory structure. (Gov. Code §§ 65852.2(e)(1)(A)(i) and 65852.22(h)(1).) AB 68 (Ting) made several changes to Government Code section 65852.22, most notably regarding the creation of JADUs pursuant to a local government ordinance. Where a local

government has adopted a JADU ordinance, "[t]he ordinance may require a permit to be obtained for the creation of a [JADU]." (Gov. Code § 65852.22(a).) If a local government adopts a JADU ordinance, a maximum of one JADU shall be allowed on a lot zoned for single-family residences, whether they be proposed or existing single-family residences. (Gov. Code § 65852.22(a)(1).) (This formerly only applied to *existing* single-family residences. Now, proposals for a new single-family residence can include a JADU.) Efficiency kitchens are no longer required to have sinks, but still must include a cooking facility with a food preparation counter and storage cabinets of reasonable size relative to the space. (Gov. Code § 65852.22(a)(6).) Applications for permits pursuant to Section 65852.22 shall be considered ministerially, within 60 days, if there is an existing single-family residence on the lot. (Gov. Code § 65852.22(c).) (Formerly, complete applications were to be acted upon within 120 days.)

If a local government has *not* adopted a JADU ordinance pursuant to Section 65852.22, the local government is required to ministerially approve building permit applications for JADUs within a residential or mixed-use zone pursuant to Section 65852.2(e)(1)(A). (Gov. Code § 65852.22(g).) That section is detailed in bullet points on pages two-three of this memorandum and refers to specific ADU and JADU approval scenarios.

Sale or Conveyance of ADUs Separately from Primary Residence – AB 587 (Friedman)

AB 587 (Friedman) added Section 65852.26 to the Government Code to allow a local government to, by ordinance, allow the conveyance or sale of an ADU separately from a primary residence if several specific conditions all apply. (Gov. Code § 65852.26.) This section only applies to a property built or developed by a qualified nonprofit corporation, which holds enforceable deed restrictions related to affordability and resale to qualified low-income buyers, and holds the property pursuant to a recorded tenancy in common agreement. Please review Government Code Section 65852.26 if such conditions apply.

Covenants and Deed Restrictions Null and Void – AB 670 (Friedman)

AB 670 added Section 4751 to the California Civil Code, making void and unenforceable any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an ADU or JADU on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code.

Delayed Enforcement of Notice to Correct a Violation – SB 13 (Wieckowski)

SB 13 (Wieckowski) Section 3 added Section 17980.12 to the Health and Safety Code. The owner of an ADU who receives a notice to correct a violation can request a delay in enforcement, if the ADU was built before January 1, 2020, or if the ADU was built after January 1, 2020, but the jurisdiction did not have a compliant ordinance at the time the request to fix the violation was made. (Health & Saf. Code § 17980.12.) The owner can request a delay of five (5) years on the basis that correcting the violation is not necessary to protect health and safety. (Health & Saf. Code § 17980.12(a)(2).)

Tyler Eaton

From: Cynthia Martin [redacted]
Sent: Tuesday, January 4, 2022 12:02 PM
To: Richard Mollica; Tyler Eaton
Cc: [redacted]; Scott Hoeft; Cynthia Martin; Cindy Martin
Subject: Fw: Points & Authorities - City of Malibu Proposed ADU Ordinance - City Attorney
Attachments: Cotti - Points and Authorities - ADU Ordinance Side and Rear Building Yard Setbacks 1-4-22.pdf

Hello Richard and Tyler,

We hope you are having a great start to the new year.

We believe the City's proposed ADU Ordinance is legally flawed under state law, related to side and rear building setbacks, and given the short time frame between now and the staff report going out, we have forwarded our analysis directly to the City attorney. Please see attached and below.

As always, thank you for your time.

Sincerely,

Cynthia Martin, JD I Special Projects Manager **I Schmitz & Associates, Inc.**
[redacted]

From: Cynthia Martin [redacted]
Sent: Tuesday, January 4, 2022 11:50 AM
To: [redacted]
Cc [redacted] Scott Hoeft [redacted]; Cindy Martin [redacted]; Cynthia Martin [redacted]
Subject: TIME SENSITIVE - Points & Authorities - City of Malibu Proposed ADU Ordinance - City Attorney

Hello Mr. Cotti,

I hope this day finds you well.

Please find our attached Points and Authorities regarding the City of Malibu's proposed ADU Ordinance, relating to building yard setbacks, being legally inconsistent with Coastal Commission directives and State Guidelines.

We are bringing this to your attention now, so the proposed ordinance can be revised prior to the Staff Report going out and the Planning Commission Hearing, to prevent the necessity of having to subsequently modify the proposed ordinance again.

On a separate matter, we are also requesting clarification in the proposed ADU Ordinance regarding ADUs attached to accessory structures.

Four Foot Side and Rear Yard Setback – We believe the City's proposed ADU Ordinance is inconsistent with Coastal Commission directives and State Guidelines in requiring regular building yard setbacks for all ADUs which are processed as a CDP. Based on the attached points and authorities, and the policy articulated in the Coastal Commission Memorandum of April 21, 2020, regular side and rear setbacks should only be applied when there are identifiable impacts to a coastal resource.

Accessory Dwelling Unit attached to an Accessory Structure – Based on our prior communications with City Planner Tyler Eaton, it was confirmed that the proposed ADU Ordinance will allow an ADU to be attached to an accessory structure whether using existing space or adding to it, provided there is a dividing wall and separate entrance, and assuming all other development standards are met such as TDSF, etc. Mr. Eaton stated the definition of a "*detached* dwelling unit" includes ADUs *attached* to accessory structures. Although we agree this is technically correct, we also believe it is potentially confusing. This is especially so given that the proposed ordinance does not specifically contain language allowing ADUs attached to accessory structures.

To clear up any confusion regarding the permissibility of ADUs attached to accessory structures, we recommend the following language be added to the definition of detached accessory dwelling unit, below in red font.

> ACCESSORY DWELLING UNIT, ATTACHED - an accessory dwelling unit that is structurally attached to the primary dwelling unit by a shared wall or as an additional story above the primary dwelling unit, but which has independent, direct access from the exterior.
>
> ACCESSORY DWELLING UNIT, DETACHED - an accessory dwelling unit that is not structurally attached to the primary dwelling unit, including an accessory dwelling unit that is structurally attached to an accessory structure by a shared wall or as an additional story above the accessory structure, but which has independent, direct access from the exterior.

We believe the foregoing added language will clear up any potential confusion regarding the permissibility of ADUs attached to accessory structures, assuming all other development standards are met, i.e. TDSF, etc.

Thank you for your time and consideration of these important issues.

Sincerely,

Cynthia Martin, JD | Special Projects Manager | **Schmitz & Associates, Inc.**
[redacted]

Tyler Eaton

From: Mark D. Baute [redacted]
Sent: Tuesday, January 4, 2022 5:28 PM
To: Richard Mollica; Yolanda Bundy; Karen Farrer
Cc: Tyler Eaton; Trevor Rusin; Mikke Pierson; Paul Grisanti
Subject: RE: I should be able to send something out tomorrow

All:

I have spoken briefly with Richard, Karen, Paul, Mikke and a few of the neighbors on Point Dume and in Malibu Park, and three of the architects that make regular appearances. This informal group of peeps is what I now call the Malibu Action Committee. Mikke is skiing and enjoying a birthday, which he claims is his 40th (who knew?).

In any event, tomorrow I will send something out in draft form that would put Malibu on the front end, the progressive end, of incentivizing one story small scale affordable rural housing units, and would limit the future lot splits that Malibu is going to face under both Senate Bill 9 (the "Duplex Statute"), and the ADU Statute.

A few "big picture" thoughts for all of you:

1. I think the city should be very careful to avoid stating that the "Local Coastal Plan" or the "Local Implementation Plan" can require an otherwise qualified small scale ADU to undergo a CDP/public hearing process. In reality, the ADU Statute pre-empts and trumps Malibu's Local Coastal Plan and the Local Implementation Plan. Mazza may be a long term resident but he is unsophisticated and his statements in public are extremely ignorant in terms of how the law works and how and why Sacramento is passing certain things designed to help Planning Departments avoid the whims of 80 year old white guys. Small scale ADUs from respected and respectful owners can and will be ministerially approved by Richard, Yolanda and others in planning, and there is to be no hearing and no CDP is required. Perhaps more important: this is the sort of housing product you need to incentivize.

2. You should be extremely careful about this idea that the label "High Fire Severity Zone" will enable Malibu to escape, delay or circumvent Senate Bill 9. In my view, that won't work, for multiple reasons, the simplest of which is this: the days when coastal cities like Malibu could be run by old white men who believe that a lot should never be split are over, and Senate Bill 9's intent is to make sure that cities like Malibu cannot ignore the statute by citing "High Fire Severity Zone." Whether the city gets sued and loses on the first iteration of the statute is not really the central point. You may get sued, you may not. You may lose, you may not. The reality is this: Oregon and Minneapolis outlawed R1 zoning, and recognized that R1 zoning and NIMBY politicians and appointees are the last vestiges of hidden racism and exclusionary tactics, and there will be more statutes to follow which deprive local politicians and their appointees from abusing their own voters and their own residents based on their confused "zero development" vision, which is how cities end up burning to the ground, like Malibu did when Woolsey hit the city. The "block all development" psychosis and NIMBY lunacy does not work and leaves the city fully exposed and lacking all basic public services, and deprives the community of normal small scale housing product. Mazza and Uhring don't fully understand what they have created, which is nothing but mansions.

3. As a group we are going to need to educate and teach and inform the appointees that are too dense to understand that they are creating mansionization, and that they are not sophisticated enough to know that they are creating a city that is all mansions, owned by the very wealthy, and that there will soon be no kids for the local schools, and no housing for parents/grandparents. I may or may not be able to attend the

Planning Commission meeting on Jan. 19. I would encourage you to take a close look at what I propose, and if Richard, Yolanda, Mr. Eaton, Mikke, Paul and Karen like it, educate Jennings, Smith and Wetton a bit, and don't adopt the current proposal, and instead, debate it on January 19, table it, and get something a bit more serious, thorough and progressive on the agenda for the next meeting in February. If you do this right, you can actually limit the mansions, create some normal scaled housing, satisfy all 79 affordable housing units with the small scale one story ADUs and homes that get built during 2021-2028, and really change the direction of the city.

4. Also, and with a sense of humor, consider this: wouldn't it be nice if the Planning Commission and City Council were not bogged down with small scale one story ADU and small house applications, so that Mazza, Uhring and others actually have to focus on other larger scale long term vision and "work plan" items that are of more consequence? Imagine a city that runs a bit more like other well run cities that have their own police departments and their own fire departments, in which Richard and Yolanda and Mr. Eaton approve the right small scale one story energy efficient fire hardened dwelling applications, and only the hedge funders and billionaires trying to build 9,000 SF homes with massive underground basements had to go through public CDP hearings.

Mark

From: Richard Mollica <rmollica@malibucity.org>
Sent: Monday, April 19, 2021 3:42 PM
To: Mark D. Baute [redacted]
Cc: Justine Kendall <jkendall@malibucity.org>
Subject: RE: Introduction

Hi Mark,
Thank you for your call today. Below is the link to our ADU page.

Accessory Dwelling Units | Malibu, CA - Official Website (malibucity.org)

The link below are the proposed updates to the LCP and the MMC.

https://www.malibucity.org/DocumentCenter/View/26084/Public-Draft_March-2020

Changes have been made since last March. Also if you have questions about the ordinance Justine would be glad to help as well.

Richard

Richard Mollica, AICP
Planning Director
City of Malibu
310-456-2489 Ext. 346

From: Mark D. Baute [redacted]
Sent: Saturday, April 17, 2021 10:20 AM
To: Richard Mollica <rmollica@malibucity.org>
Subject: Re: Introduction

Morning is good, and if you like I can drive to city hall from point dume for an 8 or 9 meeting, or just call you on my drive downtown. Just let me know what works for you, and enjoy the weekend.

Get Outlook for Android

From: Richard Mollica <rmollica@malibucity.org>
Sent: Friday, April 16, 2021 10:41:30 PM
To: Mark D. Baute [redacted]
Subject: Re: Introduction

Hi Mark,
Is there a good time for us to talk on Monday?

Sorry today was packed with returning calls from the week.

Have a good weekend,
Richard

Richard Mollica, AICP
Assistant Planning Director
City of Malibu
310-456-2489 Ext 346

From: Mark D. Baute [redacted]
Sent: Friday, April 16, 2021 10:56 AM
To: Reva Feldman; Richard Mollica
Subject: RE: Introduction

Thanks Reva. Richard, I spoke with Paul and Mikke and Karen about the ADU ordinance, but wanted to touch base with you on it, to see where things are at. My direct line at work is 213-[redacted]

Mark

From: Reva Feldman <rfeldman@malibucity.org>
Sent: Friday, April 16, 2021 10:52 AM
To: Richard Mollica <rmollica@malibucity.org>; Mark D. Baute [redacted]
Subject: Introduction

Richard,
I am connecting you with Mark Baute, copied above. He would like to discuss the ADU ordinance with you.
Best,
Reva

Reva Feldman | City Manager
City of Malibu
(310) 456-2489, extension 226

[redacted]

From: Mark D. Baute [redacted]
Sent: Tuesday, January 25, 2022 2:46 PM
To: Venegas, Denise@Coastal [redacted]
Cc: mpierson@malibucity.org; Karen Farrer <kfarrer@malibucity.org>
Subject: RE: Malibu Proposed ADU Ordinance

[redacted] I am reading the two January 21, 2022 Ainsworth memoranda now (on the ADU ordinance and Senate Bill 9), and I have submitted a competing draft ADU ordinance to the majority of the city council. If possible, I want to get you on a call with the CDHCD contact, to see if we can reconcile the competing goals of both Coastal and the CDHCD. In answer to your question below, not yet, but I spoke with Todd, the BBK lawyer that drafted the ADU ordinance, and it would not surprise me if a majority of the city council asks for my help as counsel and/or asks that my proposed ADU Ordinance be adopted or considered, and I am going to urge both the Planning Commission and the City Council to reject the current proposed ADU ordinance.

My assessment thus far is as follows:

1. The current proposed ADU ordinance is inadequate, and likely violates the ADU Statute, in numerous respects.
2. Neither the Planning Commission nor the City Council have provided any real guidance to outside counsel on what sort of ADU Ordinance they want, or why, or how to encourage ADUs in areas that do not implicate any coastal resources or impact any LCP provision.
3. The current ADU ordinance was largely "adapted/adopted" from other urban cities that are not coastal, in part because BBK has done 50 or 60 such ordinances in other jurisdictions.
4. There does not appear to have been any focus on the individual neighborhoods within Malibu, which is required in the Malibu General Plan.
5. The current proposed ADU ordinance will increase the number of mansions in Malibu, and will discourage anyone/everyone from building small one story ADUs.
6. There was no effort or process in the proposed ordinance to separate out those ADUs that are entitled to a "waiver" from those that impact Coastal Resources or LCP issues, which is what Ainsworth's Coastal Commission memorandum requires and encourages.

Mark

From: Venegas, Denise@Coastal [redacted]
Sent: Tuesday, January 25, 2022 12:38 PM
To: Mark D. Baute [redacted]
Subject: RE: Malibu Proposed ADU Ordinance

Hi Mark –

I hope you're doing well. To clarify, are you representing the City of Malibu on this matter? I'm happy to attach the comments we sent to City staff on the ADU ordinance (CCC edits are blue and in the comment section).

Thanks,

Denise

Denise Venegas

Coastal Program Analyst

California Coastal Commission

[redacted]

[redacted]

[redacted]

[redacted]

From: Mark D. Baute [redacted]
Sent: Tuesday, January 25, 2022 11:57 AM
To: Venegas, Denise@Coastal [redacted]
Subject: RE: Malibu Proposed ADU Ordinance

Denise:

If possible, I'd like to get a call with you on the books. The Planning Department is going to send me Coastal's input to the ADU ordinance, and I think if you and I can talk, we should be able to get an ADU ordinance drafted that is consistent with Coastal's desires but which also satisfies the Governor's desire to see some small scale affordable housing built in Malibu. How do you look for a short call this Thursday or Friday?

Mark

From: Venegas, Denise@Coastal [redacted]
Sent: Wednesday, January 19, 2022 1:30 PM
To: Mark D. Baute [redacted]
Subject: RE: Malibu Proposed ADU Ordinance

Hi Mark –

Apologies we could not connect. I was tied up in a few meetings yesterday afternoon.

Best,

Denise

Denise Venegas

Coastal Program Analyst

California Coastal Commission

[redacted]

[redacted]

[redacted]

[redacted]

From: Mark D. Baute [redacted]
Sent: Tuesday, January 18, 2022 1:39 PM
To: Venegas, Denise@Coastal [redacted]
Subject: Malibu Proposed ADU Ordinance

Denise:

I spoke with Tyler and Adrian in Malibu Planning today about the proposed ADU ordinance, and some recent feedback from Coastal on it. Can you call me at 213-[redacted] when time allows. I am going to speak on it tonight, the proposed ordinance needs a large number of deletions and improvements in order to comply with CDHCD requirements.

Mark

Tyler Eaton

From: Tyler Eaton
Sent: Monday, February 14, 2022 3:07 PM
To: Cindy Martin
Subject: RE: ADUs and OWTS

Hi Cindy,

It is possible to have both a SFR and ADU connect to one OWTS but the OWTS would need the necessary upgrades for accommodation. Our Environmental Health Department would review the impacts to the OWTS and ultimately assess if the current one could be used.

According to our EH staff, the most likely scenario is that the additional fixtures of the ADU causes the existing OWTS to be upgraded. It is also possible to apply for a separate OWTS to serve the ADU.

Thanks,

Tyler Eaton
Associate Planner | City of Malibu
23825 Stuart Ranch Road, Malibu CA, 90265
Office: 310-456-2489 Ext. 273
Mobile: 424-422-8365
Malibucity.org/planning

From: Cindy Martin [redacted]
Sent: Friday, February 11, 2022 11:02 AM
To: Tyler Eaton <teaton@malibucity.org>
Cc: Cindy Martin [redacted]
Subject: ADUs and OWTS

Hi Tyler,

What is the City's current policy on ADUs and OWTS? Is a separate system required for a new ADU, but not existing? What about an ADU conversion of an existing accessory structure already hooked up to the septic system also serving the primary residence?

Sincerely,

Cynthia Martin, JD | Special Projects Manager | **Schmitz & Associates, Inc.**
[redacted]

Tyler Eaton

From: Ryan J. Clarkson [redacted]
Sent: Monday, January 24, 2022 9:59 AM
To: Tyler Eaton
Subject: Comments for ADU Ordinance

Dear Mr. Eaton,

I reviewed the proposed ADU ordinance and red lines for the CCC. I'm curious about why there is a proposed 900 square foot maximum size restriction on guest houses, while 2-bedroom ADUs have a proposed 1300 square foot maximum size restriction. If the goal of the ordinance is to help solve a housing shortage, it would seem to me that guest houses should have a 1300 square foot maximum size restriction akin to the ADU outer limit. That would encourage Malibu homeowners, many of whom have the land, ability, and need for the additional space, to add a 1300 square foot guest house that would be more inviting/usable to prospective tenants, estate workers, childcare providers, family members, etc. It would also incentivize Malibu homeowners to invest in the development of a guest house, as the incremental cost per square foot to develop the last 400 square foot of 1300 square foot guest house is far lower than the cost to develop the first 900 square feet of a guest house. It therefore provides homeowners with a financial incentive to take the desired step of developing guest houses to help assuage the housing crisis. I look forward to hearing from you.

Thanks and kind regards,

Ryan J. Clarkson, Esq.
Clarkson Law Firm, P.C.
[redacted]

Tyler Eaton

From: Kay Gabbard [redacted]
Sent: Tuesday, February 22, 2022 4:01 PM
To: Solishia Andico; Tyler Eaton; Aakash Shah; Julie Bauer; Lauren Doyel; Josh Gabbard; Bryan Gabbard
Subject: Fwd: [redacted] Guest house to ADU.
Attachments: ADU Septic capacity.pdf

Happy reopening day! It was good to "see" you all again...Thank you for your time.
However I am disappointed, or shocked really, to hear that I will have to spend more than $100,000. to convert our Guest House to an Accessory Dwelling Unit because I had 11 fixture units in our original/burned Guest House and the ADU provisional plans call for 15 fixture units.

I am disappointed because I believe that the whole idea of popularizing ADUs is to ease our very obvious housing crisis in California and all over the US. I am confused because the idea behind ADUs as proposed by the California Department of Housing and Community Development was to encourage the construction/creation of these units by lowering or removing the barriers by eliminating restrictive building codes and high developer permitting fees that have impeded such structures in the past.

I am confused because even though the LA County Plumbing Code (attached) shows that the capacity of septic tanks for Single Family Dwellings with 1 or 2 bedrooms allows for 15 fixture units for a 750 gal tank (which we currently have, you are telling me that because I only had 11 units before the Woolsey Fire destroyed my life, I must now exceed these Code capacities, put in a new and larger tank while constructing what is fast becoming the future of California's "affordable" housing market, the ADU?

ADUs should be affordable to build and affordable to live in. They are low impact, efficient, flexible, independent living facilities for one or more persons. They allow extended families to support aging family members to age in place with privacy and independence. The new California state regulations governing them were intended to reduce the regulatory, physical, and financial barriers to constructing ADUs and I'm afraid we in Malibu have somehow missed the memo. It is my hope that this can be relooked at and remedied soon.

Thank you for every moment you give to making our community vibrant and sensitive to the needs of all.

Kay Gabbard
[redacted]

---------- Forwarded message ---------
From: **Kay Gabbard** [redacted]
Date: Tue, Feb 22, 2022 at 1:09 AM
Subject: Re: 5466 horizon drive Guest house to ADU.
To: Tyler Eaton <teaton@malibucity.org>
Cc: Aakash Shah <ashah@malibucity.org>, Byron Castro [redacted], Dad [redacted], Josh Gabbard [redacted], Julie Bauer <jbauer@malibucity.org>, Lawrence Woodcraft [redacted], Mom [redacted], Raul Mayorga [redacted]

Good morning. As Tyler suggested I will come to City Hall today about 9:15 am with the preliminary conversion plans and CDP check list to begin the process of checking with all departments as they are available.
Thank you as always.
On Fri, Feb 18, 2022 at 3:54 PM Kay Gabbard [redacted] wrote:
> Assuming you are open I will be in Tuesday by 9:15. I will double check on Monday to make sure you are open on Tuesday and…. THANK YOU as always.
>
> On Fri, Feb 18, 2022 at 2:10 PM Tyler Eaton <teaton@malibucity.org> wrote:
>
> > Hello Kay and Josh,
> >
> > Attached is a CDP checklist. We might be open this Tuesday between 8am-12pm and that would be a good time to come and circulate this document. You 'll have to see all the departments listed on the first page and gather their

NOTICE OF PUBLIC HEARING
CITY OF MALIBU
PLANNING COMMISSION

The Malibu Planning Commission will hold public hearing on **MONDAY, December 6, 2021, at 6:30 p.m.** on the project identified below. This meeting will be held via teleconference only in order to reduce the risk of spreading COVID-19 and pursuant to AB 361 and the County of Los Angeles Public Health Officer's Safer at Home Order. All votes taken during this teleconference meeting will be by roll call vote, and the vote will be publicly reported.

How to View the Meeting: No physical location from which members of the public may observe the meeting and offer public comment will be provided. Please view the meeting, which will be live streamed at https://malibucity.org/video and https://malibucity.org/VirtualMeeting.

How to Participate Before the Meeting: Members of the public are encouraged to submit email correspondence to planningcommission@malibucity.org before the meeting begins.

How to Participate During the Meeting: Members of the public wishing to speak or defer time to another speaker during the meeting must participate through the Zoom application and must be present in the Zoom conference to be recognized. The City requests that you sign up to speak before the item you would like to speak on has been called by the Chair. For those wishing to defer time, you are not required to sign up to speak. At the start of public comment for the item, the Chair shall ask members of the public wishing to defer time to raise their hands in the Zoom meeting using the reactions button. Each person will be called to verify their presence in the Zoom meeting and their intent to donate time.

Please visit https://malibucity.org/VirtualMeeting and follow the directions for signing up to speak and downloading the Zoom application.

ACCESSORY DWELLING UNIT ORDINANCE

Local Coastal Program Amendment No. 18-002 and Zoning Text Amendment No. 18-004 – Consider an amendment and make a recommendation to the City Council to amend the Local Coastal Program (LCP) and Title 17 (Zoning) of the Malibu Municipal Code modifying regulations pertaining to accessory dwelling units, also known as second dwelling units, to bring existing regulations into compliance with State law

Location:	Citywide Project
Case Planner:	Tyler Eaton, Assistant Planner (310) 456-2489, extension 273 teaton@malibucity.org

In accordance with the California Environmental Quality Act (CEQA), Public Resources Code Section 21080.9, CEQA does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCP amendment. (LCPA). This application is for an LCP amendment which must be certified by the California Coastal Commission before it takes effect. LIP Section 1.3.1 states that the provisions of the LCP take precedence over any conflict between the LCP and the City's Zoning Ordinance. In order to prevent an inconsistency between the LCP and the City's Zoning Ordinance, if the LCPA is approved, the City must also approve the corollary amendment to the Zoning Ordinance. This amendment is necessary for the preparation and adoption of the LCPA and because they are entirely dependent on, related to, and duplicative of, the exempt activity, they are subject to the same

CEQA exemption. The ZTA and LCPA are not a project within the meaning of CEQA Guidelines Section 15378, because they have no potential to result in physical change to the environment, directly or indirectly. The ZTA and LCPA do not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for a new ADU is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the ZTA and LCPA were a "project" within the meaning of State CEQA Guidelines Section 15378, they are exempt from CEQA. CEQA applies only to projects which have the potential for causing a significant effect on the environment. Pursuant to CEQA Guidelines Section 15061(b)(3), where it can be seen with certainty that there is no possibility is not subject to CEQA. Moreover, in the event that the ZTA and LCPA are interpreted so as to permit construction of an ADU on a particular site, the construction would be exempt from CEQA review in accordance with either State CEQA Guidelines Section 15301 (existing facilities), State CEQA Guidelines Section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines Section 15304 (minor alterations to land).

A written staff report will be available at or before the hearing for the project. All persons wishing to address the Commission regarding this matter will be afforded an opportunity in accordance with the Commission's procedures. Oral and written comments may be presented to the Planning Commission on, or before, the date of the meeting.

Copies of all related documents can be reviewed by any interested person at City Hall during regular business hours. For additional information on the proposed ordinance, visit the City's website at malibucity.org/ADU.

IF YOU CHALLENGE THE CITY'S ACTION IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY, AT OR PRIOR TO THE PUBLIC HEARING.

If there are any questions regarding this notice, please contact Tyler Eaton, at (310) 456-2489, extension 273.

Richard Mollica, Planning Director

Publish Date: November 11, 2021